

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

74-1682
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

—
No. 74-1682
—

JOHN WESLEY RALLS, PETITIONER-APPELLEE

vs.

JOHN R. MANSON, COMMISSIONER
OF CORRECTION OF THE STATE OF
CONNECTICUT, RESPONDENT-APPELLANT

—
APPENDIX FOR
PETITIONER-APPELLEE
—



MORTON P. COHEN,
DAVID S. GOLUB,
Attorneys for APPELLEE-PETITIONER,
University of Connecticut
School of Law
Legal Clinic
West Hartford, Connecticut 06117
(203) 523-4841, Ext. 374 4

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS OF APPELLEE - PETITIONER'S APPENDIX

	<u>PAGE</u>
Petition of John Ralls	1
Order to Show Cause Why A Writ Of Habeas Corpus Should Not Be Issued	4
Amended Petition	5A
Order of United States District Court Dated January 11, 1974	6
Decision of United States District Court.....	7
Certificate of Complete Docket Entries of New Haven County Superior Court	65
Docket Entries of New Haven County Superior Court	66
Table of Length of Time Between Notice of Appeal and Final Decision By Connecticut Supreme Court (Criminal Cases).....	71
Table of Chronology Regarding Connecticut Criminal Appeals Decided Since November, 1970	77
Official Citations For Material Submitted In Previous Two Tables	81
Table of Citations for Other States' Requirements of Records on Appeal	84
Table of Length of Time Between Notice of Appeal and Draft Findings in Connecticut	86
Table of Length of Time Between Draft Finding and Finding in Connecticut	88
Table of Length of Time Between Notice of Appeal and Finding in Connecticut	90
Motion For Extension of Time Dated May 1, 1972	92
Motion For Extension of Time Dated May 31, 1972	93
Motion For Extension of Time Dated July 31, 1972	94
Motion For Extension of Time Dated November 14, 1972	95
Motion For Extension of Time Dated December 6, 1972.....	96

Affidavit of Joan E. Pagliucco	97
Affidavit of John Ralls	100
Affidavit of John Williams	103
Affidavit of William J. Mack, Jr.	108
Motion to File Typewritten Brief	111
State's Memorandum in Opposition to Motion to File Typewritten Brief	112
Decision of Connecticut Supreme Court	114
Motion for Extension of Time Dated December 10, 1973	115
Fingerprint Record, Exhibit S of the New Haven County Superior Court Face Page	117
Fingerprint Record, Exhibit S of the New Haven County Superior Court Reverse Side	118
Excerpt of Testimony of Sergeant McDonald Regarding Fingerprint Record	119
Excerpt of Court's Additional Instructions	123

1

United States District Court
for the
District of Connecticut

10/17
CAMS

JOHN WESLEY RALLS

V.

STATE of CONNECTICUT

H 205
CIVIL No. _____

PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF A FULL EVIDENTIARY
HEARING UPON A FINDING OF INORDINATE
DELAY IN ADJUDICATION OF DIRECT
APPEAL, DENIAL OF EQUAL PROTECTION
OF THE LAW AND INEFFECTIVE ASSISTENCE
OF TRIAL COUNSEL

Petitioner was arrested March 4, 1970, for alleged first degree murder, New Haven Superior Court Docket No. 16334.

After a trial by jury of twelve (12), Petitioner was found guilty of second degree murder and subsequently sentenced to life in prison, on December 11, 1970. Notice of right to appeal was filed December 11, 1970, well within the twenty (20) days allotted by Connecticut Law.

After arriving in prison, Petitioner filed with the Clerk of the New Haven Superior Court notice of right to have sentence reviewed on December 22, 1970, well within the thirty (30) days allotted by Connecticut Law.

Petitioner has been incarcerated without being able to post bail since ~~December~~ March 4, 1970, a total of three (3) years, five (5) months and twenty-seven (27) days. Petitioner has been awaiting appeal since December 18, 1971, a total of one (1) year, eight (8) months and thirteen (13) days (see attached 1).

Mr. Anthony V. DeMayo, hereinafter referred to as TRIAL COUNSEL, on January 18, 1971, informed the Petitioner that appellate proceedings in Connecticut are very slow (see 2 attached).

Mr. John R. Williams, hereinafter referred to as APPEAL COUNSEL, on September 13, 1972, informed the Petitioner that appellate proceedings in Connecticut are very slow (see 3 attached).

Petitioner was informed by APPEAL COUNSEL January 9, 1973, that the state had filed its appeal draft in his case (see 4 attached).

1

Petitioner was informed by APPEAL COUNSEL April 11, 1973, that the trial judge had filed and withdrew a partial appeal draft finding (see 5 attached).

Petitioner was informed by the review division of the Superior Court January 7, 1971, that he could not have his sentence reviewed because his appeal was still pending (see 6 attached).

TRIAL COUNSEL for the Petitioner informed the Petitioner on September 10, 1971, that TRIAL COUNSEL could not withdraw from his case (see 7 attached).

Petitioner wrote to State Supreme Justice of the State Supreme Court John P. Cotter for assistance in relief of TRIAL COUNSEL. He recieved no reply, however, shortly thereafter he was taken to a hearing on motions for dismissal of TRIAL COUNSEL and appointment of APPEAL COUNSEL. The Superior Court judge presiding over the hearing of the motions was Judge Otto H. LaMacchia. Hearings were held on October 28, 1971.

TRIAL COUNSEL informed the Petitioner on June 24, 1971, that he was in receipt of the trial transcript (see 8 attached).

As of October 18, 1971, TRIAL COUNSEL had filed a ten (10) page, fifty (50) paragraph appeal draft from a four-hundred (400) page transcript (see 1, 3 and 9 attached).

APPEAL COUNSEL was appointed October 18, 1971, on December 18, 1971, two (2) months later, he informed the Petitioner that he had filed a seven-hundred (700) paragraph appeal draft (see 1 attached).

During jury deliberation, November 17, 1970, TRIAL COUNSEL left the court building and never returned. At Eight-fifteen O'clock (8:15 P.M.) P.M., November 17, 1970, the trial judge called out the jury to admonish them for taking too much time. Petitioner was not represented by counsel. At Nine O'clock P.M. (9:00 P.M.) November 17, 1970, the jury came out for questions and Petitioner was introduced to Mr. McQuade by the trial judge who stated that Mr. McQuade was to stand instead of TRIAL COUNSEL.

APPEAL COUNSEL has stated that he finds TRIAL COUNSEL's representation to have been ineffective (see 1, 3, 5, 10, and 11 attached).

APPEAL COUNSEL has included ineffectiveness of TRIAL COUNSEL in his appeal draft findings (see 1 and 10 attached).

PRAYER

Petitioner respectfully prays that this Honorable Court will consider the findings in WAY V. CROUSE, 421 F.2d 145 (1970), where it was stated that "delay in determination of Direct Appeal, as well as delay in adjudication of postconviction appeal, may work denial of due process." and WEST v. STATE of LOUISIANA, 478 F.2d 1026 (1973), where it was found that "lengthy delay in state proceedings, if unjustified, may itself be sufficient reason for waiving the exhaustion requirement. see DIXON v. FLORIDA, cir. 5 1968, 388 F.2d 424." and upon considering the above mentioned rulings weigh that two (2) months for Petitioner's counsel to file appeal briefs juxtaposed with the state's taking over a year and the judge still not having filed constitutes a long time and/or denial of equal protection of the law.

Petitioner respectfully prays that this Honorable Court will further consider WAY v. CROUSE, where it was stated, "the question presented here is in what court should Petitioner seek vindication of his asserted Constitutional grievance. In our view, Way properly resorted to the Federal Court, which should not, without knowing the facts and circumstances of the eighteen month delay, have required him at this late date to commence a completely new and independent proceeding through the very courts which are responsible, on the face of the readings, for the very delay of which he complains." and WEST v. STATE OF LOUISIANA, where it was said, "if delay were the only consideration, the proper course would be to remand the case to the district court for a hearing as to whether the delay was justified."

Petitioner respectfully prays that this Honorable Court will consider UNITED STATES v. SMITH, 411 F.2d (6th cir. 1969) and find that the absence of Counsel during polling of the jury was in violation of Petitioner's right to have counsel present at all stages of a criminal proceeding.

Wherefore, Petitioner respectfully prays that this Honorable Court enter judgement granting Petitioner a ~~REHEAR~~ FULL EVIDENTIARY HEARING or any relief that this Honorable Court deems just and proper.

Respectfully submitted,

John Wesley Rails
John Wesley Rails
In Propria Persona

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN WESLEY BALLS

FILED
JUN 17 5 57 AM '73
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

v.

:

CIVIL NO.

H 205

JOHN MANSON, et al

:

16334
ORDER TO SHOW CAUSE WHY A WRIT OF
HABEAS CORPUS SHOULD NOT BE ISSUED

Examination of this pro se petition for writ of habeas corpus, read in the light of prior state proceedings by virtue of which petitioner is now held as a state prisoner, is open to the interpretation that he was denied his Constitutional rights at the trial at which he was convicted by reason of:

1. incompetency of assigned counsel; and
2. undue coercion of the jury by the presiding judge.

The conduct challenged in these proceedings and the nature of the legal and factual issues lurking in this pro se petition persuade the court that it is desirable that further proceedings be conducted with the benefit of counsel to aid the petitioner. Accordingly, Morton Cohen is appointed to represent the petitioner in these proceedings, and he is hereby directed to promptly file an amended petition. Since the general nature of the issues already sufficiently appears, the further refinement by reason of amended petition need not delay framing of the issues for the purpose of proceeding expeditiously with this matter. It is, therefore,

ORDERED that a copy of this order, together with a copy of the verified petition, be served by the United States Marshal, or his Deputy, upon John Manson, Commissioner of Corrections, and also upon the State's Attorney for Haven County, on or before October 23, 1973; and it is further

ORDERED that said John Manson, Commissioner of Corrections, file with this court on or before October 29, 1973, a written return to the allegations of said petition. It is understood that amendments to the return to meet any substantive issues subsequently raised will be readily granted. And it is further

ORDERED that the petitioner, John Wesley Ralls, be retained within this district until further order of this court.

Dated at Hartford, Connecticut, this 16th day of October, 1973.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
Chief Judge

I hereby certify that the foregoing is a true and correct copy of the original filed in the Court of Superior Judges.
10-16

By: Sam M. Grew
Deputy Clerk

10/16/73, 4:43 P.

"The filing fee and Mank's fees are waived; so ordered"

[Signature]

5

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner :
vs. :
JOHN MANSON, et. al, :
Respondents : DECEMBER 19, 1973

AMENDED PETITION FOR WRIT OF
HABEAS CORPUS

Now comes the Petitioner, JOHN WESLEY RALLS, and petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. #2241, upon the following facts:

1. Petitioner is currently incarcerated at the Connecticut Correctional Institution at Somers, Connecticut where he is serving a sentence of life imprisonment pursuant to conviction on November 17, 1970, for murder in the second degree after jury trial in Connecticut Superior Court (at New Haven).

2. Petitioner's trial was conducted in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, in the following respects:

A. Petitioner was denied the effective assistance of counsel at critical stages of the proceedings against him.

i. At trial, petitioner's attorney, Anthony DeMayo, was not present at proceedings conducted after the jury commenced deliberations and prior to verdict. During such proceedings the court three times delivered special instructions to the jury, once in the absence of any counsel for petitioner and twice in the presence of a substitute counsel unfamiliar with the case. [See excerpt of trial transcript, set

forth and attached hereto as Appendix A]. Petitioner at no time waived the presence of DeMayo at such proceedings.

ii. Although petitioner was charged with murder in the first degree, DeMayo did not confer with petitioner about the case until the day of the trial, shortly before the actual proceedings commenced. DeMayo did not speak with possible defense witnesses, nor otherwise investigate petitioner's case prior to trial. At trial, DeMayo presented no defense in petitioner's behalf.

B. The Court's instructions to the jury applied improper pressure on the jury to agree on a unanimous decision in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix B].

i. The jury began its deliberations at approximately 2:15 p.m. on November 17, 1970. At approximately 5:00 p.m. on that date, the court recalled the jury and without any indication by the jury that its deliberations were deadlocked, instructed the jury as follows:

I cannot allow you to leave before I have some sort of verdict.

You could readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

[Trans. p. 347. Emphasis added.]

ii. Petitioner was not represented by counsel when this instruction was given to the jury, and therefore, no objection was made to it.

C. Statements made by petitioner at the time of his arrest were improperly admitted for consideration by the jury, in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix C.]

i. At the trial, Malcolm E. McHenry, a Hamden police officer, testified concerning statements made by petitioner at the time of his arrest. McHenry first stated that at approximately 5:30 p.m. on the day of petitioner's arrest, he (McHenry) had informed petitioner of

his right to remain silent and his right to the assistance of counsel. At no time did McHenry in any way indicate that petitioner waived these rights at this time. Nevertheless, a statement made by petitioner at this time was admitted into evidence.

ii. McHenry further testified, over defense counsel's overruled objection, as to alibi statements made by petitioner at approximately 6:30 p.m. on the day of petitioner's arrest. These statements were admitted even though McHenry testified that he did not readvise petitioner of his constitutional rights prior to recommencing interrogation of petitioner. Nor did McHenry in any way indicate that petitioner had at this time or previously waived his right to remain silent or to the assistance of counsel.

iii. The prosecution subsequently produced evidence casting doubt on the truth of petitioner's alibi statements. Petitioner at no time testified, nor was any evidence presented by petitioner concerning such alibi.

D. The jury was improperly informed of petitioner's prior arrests, in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix D].

i. At trial, James E. McDonald of the Connecticut State Police Department testified concerning a latent fingerprint obtained at the scene of the crime. In so testifying, McDonald compared this fingerprint with a fingerprint of petitioner contained on a " ... fingerprint card of JOHN RALLS which was on file at the Bureau of Identification ..." and also on file at the "central Bureau for all the criminal arrest records in the State of Connecticut."

ii. A motion for a mistrial on the grounds of irremediable prejudice to petitioner was denied by the Court. The fingerprint card was itself admitted into evidence and examined by the jury. Petitioner at no time testified, nor was any evidence of petitioner's character or prior arrest record presented.

3. On December 30, 1970, petitioner gave notice, through counsel, of his intent to appeal his conviction to the Connecticut Supreme Court.

4. Petitioner's appeal has, as of this date, yet to be decided by the Connecticut Supreme Court and will not be decided for months, possibly years.

5. Petitioner's failure to exhaust state remedies does not foreclose the jurisdiction of the Court since such remedies are ineffective to protect his rights.

A. The failure of the Connecticut Supreme Court to adjudicate the merits of petitioner's appeal in the three years since such appeal was initiated is a direct result of existing Connecticut appellate procedures and has denied petitioner an effective state forum in which to vindicate his rights.

B. Petitioner has not waived his right to challenge the delay in adjudicating his appeal.

i. Of the three year delay in deciding petitioner's appeal only thirteen months are attributable to extensions granted by appellate counsel, with the remaining time the normal and expected result of Connecticut appellate procedures.

ii. Petitioner is not bound by extensions of time agreed to by his appellate counsel since:

(a) Petitioner was unaware of such extensions and at all times encouraged counsel to hasten his appeal.

(b) Such extensions were a necessary result of existing Connecticut appellate procedures.

(c) Appellate counsel's willingness to grant such extensions constituted ineffective assistance of counsel.

(d) Such counsel was appointed by the state, and his actions therefore constituted state action in denial of due process of law.

Because of the foregoing facts, petitioner is being restrained of his liberty by the respondent in violation of the Constitution of the United States, and he therefore prays that the writ be granted and an order be entered discharging him from custody.

Respectfully submitted,

THE PETITIONER

MORTON P. COHEN

DAVID S. GOLUB

Attorneys for Petitioner

MICROFILM

JAN 14 1974 *Log*

NEW HAVEN

FILED

JAN 11 1 05 PM '74

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS

v.

JOHN MANSON, Commissioner
of Corrections, State of
Connecticut

CIVIL NO. H-205 *Log*

ORDER

Counsel in this habeas corpus proceeding have agreed to dispense with the taking of oral evidence at a hearing and instead to submit this case for decision upon the pleadings, brief, stipulations, affidavits, and exhibits submitted by counsel. Accordingly, it is hereby

ORDERED that all affidavits and exhibits submitted on behalf of the petitioner, and all stipulations between counsel, be filed in this Court no later than January 25, 1974;

AND IT IS FURTHER ORDERED that briefs on behalf of the petitioner, and all affidavits and exhibits submitted on behalf of the respondent, be filed in this Court no later than February 8, 1974;

AND IT IS FURTHER ORDERED that briefs on behalf of the respondent be filed in this Court no later than February 15, 1974.

Dated at Hartford, Connecticut, this 11th day of January, 1974.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
Chief Judge

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT '74

JOHN WESLEY RALLS

CLERK
U.S. DISTRICT COURT
: HARTFORD, CONN.

v.

CIVIL NO. H-205

JOHN R. MANSON, Commissioner :
of Corrections of the State :
of Connecticut :

MEMORANDUM OF DECISION

Petitioner was convicted of murder in the second degree on November 17, 1970, after a jury trial in Connecticut Superior Court at New Haven. On December 11, 1970, he was sentenced to a term of life imprisonment. He is presently incarcerated at the Connecticut Correctional Institution at Somers. He seeks a writ of habeas corpus in this Court, claiming that his rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution were denied during his trial in state court. Before the merits of his substantive claims may be assessed, however, it must be determined whether 28 U.S.C. § 2254(b), which requires state prisoners to exhaust available state court remedies before applying for federal habeas corpus, bars this Court from considering petitioner's claims.

I. EXHAUSTION OF STATE REMEDIES

A. Petitioner's Direct Appeal

The chronology of the petitioner's direct appeal in the state courts is not in dispute. Petitioner's trial counsel,

- 2 -

a Public Defender for New Haven County, was originally appointed to represent petitioner on appeal. On December 30, 1970, the Public Defender filed a notice of appeal of the petitioner's conviction in New Haven Superior Court.^{1/} On August 19, 1971,^{2/} the Public Defender filed a request for a finding and a draft finding,^{3/} as required by Sections 629 and 630 of the Connecticut Practice Book. The petitioner subsequently sought a change of counsel, and on October 28, 1971, the Public Defender was granted permission to withdraw as petitioner's appellate counsel and a Special Public Defender was appointed to represent the petitioner.^{4/} On November 15, 1971, the Special Public Defender moved for and received permission to file an amended draft finding.^{5/} On December 15, 1971, the Special Public Defender filed an amended draft finding, and on January 3, 1972, he filed an amended request for a finding.^{6/} Thereafter the State's Attorney moved for

^{1/} Petitioner's Exhibit 4, "Notice of Appeal."

^{2/} A portion of the transcript, containing the testimony at the trial, was completed on March 22, 1971, and sent to the Public Defender. The remainder of the transcript, containing the voir dire, was completed by June 16, 1971. Affidavit of Joan E. Pugliuco, court reporter for Superior Court at New Haven, dated January 24, 1974.

^{3/} Petitioner's Exhibit 11, "Request For A Draft Finding."

^{4/} See Petitioner's Exhibit 2(c), Superior Court Docket #16334.

^{5/} Id.

^{6/} Id.

8

and received numerous extensions of time in which to file its draft counterfinding,^{7/} required by Section 631 of the Practice Book. The draft counterfinding was ultimately filed on January 5, 1973.^{8/} The trial judge filed his finding, required by Sections 634-635 of the Practice Book, on March 12, 1973.^{9/} Both the Special Public Defender and the State's Attorney immediately moved to correct the trial judge's finding, pursuant to Section 636 of the Practice Book, and the trial judge filed a corrected finding on May 2, 1973.^{10/} The Special Public Defender filed assignments of error, required by Section 612 of the Practice Book, on May 29, 1973.^{11/} The record in the case finally went to the printer in June of 1973. The printed record was sent to the Connecticut Supreme Court and the parties on October 31, 1973.^{12/} An appendix to the record, which the Special Public Defender sent to the printer in July

^{7/} See Petitioner's Exhibit 2(c), (d), Superior Court Docket #16334.

^{8/} See Petitioner's Exhibit 2(e), Superior Court Docket #16334.

^{9/} Id.

^{10/} Id.

^{11/} Id.

^{12/} Respondent's Exhibit 1.

of 1973, is being printed at the present time.^{13/} Thus, almost three and one-half years after the petitioner's notice of appeal was filed, briefs have still not been printed or filed with the Connecticut Supreme Court, nor has a date been set for argument before the Connecticut Supreme Court on petitioner's direct appeal of his state court conviction.^{14/}

B. Inordinate Delay and the Absence of Effective
Available State Corrective Process
Under 28 U.S.C. § 2254(b)

The Judicial Code, 28 U.S.C. § 2254, provides as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."

This provision has generally been construed to foreclose issuance by a federal court of a writ of habeas corpus until the petitioner has presented his claims to the state courts and received a decision in his case:

"It has been settled since Ex parte Royall, 117 U.S. 241 (1886), that a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus. . . . We have consistently adhered to this federal policy, for 'it would be

13/

See Affidavit of William J. Mack, president, William J. Mack Company, printing firm, dated January 25, 1974.

14/

The Connecticut Supreme Court does not hear oral argument during July, August and September. Thus, the petitioner could not be heard on his direct appeal until some time during the October 1974 Term of the Connecticut Supreme Court, at the

- 5 -

unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation." Darr v. Burford, 339 U.S. 200, 204 (1950)"

Picard v. Connor, 404 U.S. 270, 275 (1971). As long as the petitioner fairly presents his claims to the state courts, it is of no consequence that the claims are dismissed for failure to comply with state procedural requirements: "The state courts need not have decided the merits of the claims raised by the applicant in the state courts in order for him to be considered to have exhausted his state court remedies." United States ex rel. Meadows v. State of New York, 426 F.2d 1176, 1179 n.1 (2d Cir. 1970), cert. denied 401 U.S. 941 (1971). See Hawkins v. Robinson, 367 F.Supp. 1025, 1029 (D. Conn. 1973). However, the petitioner must have presented to the state courts the same claims which he subsequently urges upon the federal habeas court. Picard v. Connor, supra, 404 U.S. at 276.

It is well established that the exhaustion requirement of 28 U.S.C. § 2254 is not jurisdictional: it does not restrict the power of the federal court to grant relief in appropriate cases. Fay v. Noia, 372 U.S. 391, 420 (1963); United States ex rel. Graham v. Mancusi, 457 F.2d 463, 468 (2d Cir. 1972). Rather, the exhaustion requirement is grounded in flexible considerations of comity, "a doctrine which teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent

- 6 -

powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter," Darr v. Burford, 339 U.S. 200, 204 (1950), quoted in Fay v. Noia, supra, 372 U.S. at 420. Indeed, the broad scope of federal habeas corpus indicates that federal courts must place primary emphasis on the redress of constitutional deprivations rather than on deference to the state judicial machinery: "Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." Fay v. Noia, supra, 372 U.S. at 401-402. As the Supreme Court recently declared, in Hensley v. Municipal Court, 411 U.S. 345, 349-350 (1973):

"While the 'rhetoric celebrating habeas corpus has changed little over the centuries,' it is nevertheless true that the functions of the writ have undergone dramatic change. Our recent decisions have reasoned from the premise that habeas corpus is not 'a static, narrow, formalistic remedy,' Jones v. Cunningham, supra, at 243, but one which must retain the 'ability to cut through barriers of form and procedural mazes.' Harris v. Nelson, 394 U.S. 286, 291 (1969). See Frank v. Mangum, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting). 'The very nature of the writ demands that it be administered with the initiative and flexibility

12

essential to insure that miscarriages of justice within its reach are surfaced and corrected.' Harris v. Nelson, supra, at 291.

Thus, we have consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements. The demand for speed, flexibility, and simplicity is clearly evident in our decisions concerning the exhaustion doctrine, Fay v. Noia, 372 U.S. 391 (1963); Brown v. Allen, 344 U.S. 443 (1953)" (Footnote omitted).

Thus the exhaustion doctrine "is a judicially crafted instrument which reflects a careful balance between important interests of federalism and the need to preserve the writ of habeas corpus as a 'swift and imperative remedy in all cases of illegal restraint or confinement.'" Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 490 (1973). Accordingly, the Supreme Court has noted that "once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied." Picard v. Connor, supra, 404 U.S. 270, 275 (1971). The exhaustion requirement

" . . . does not erect insuperable or successive barriers to the invocation of federal habeas corpus. [It] is merely an accommodation of our federal system designed to give the State an initial 'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights. Fay v. Noia, 372 U.S. 391, 438 (1963)."

Wilwording v. Swenson, 404 U.S. 249, 250 (1971).

The federal Courts of Appeals have recognized that excessive delays in state court proceedings in which a defendant claims that his conviction was obtained in violation of his constitutional rights may deny the defendant due process

13

of law and justify a federal court in proceeding to the merits of a habeas corpus petition. In the leading case, Smith v. State of Kansas, 356 F.2d 654 (10th Cir. 1966), cert. denied 389 U.S. 871 (1967), the petitioner had pleaded guilty in April, 1964, to state charges of second degree burglary and grand larceny. In September, 1964, claiming that his guilty plea had been coerced, Smith filed a motion for relief under the Kansas post-conviction statute. In March, 1965, the motion was denied. Smith filed a notice of appeal and the trial court appointed the same attorney to represent Smith on his appeal. Smith objected to the appointment of the attorney, and the attorney filed a motion to withdraw. While that motion was under consideration, Smith filed a petition for a writ of habeas corpus in federal district court. The petition was dismissed on the ground that Smith had failed to exhaust his pending state remedy. Smith then appealed the denial of federal habeas corpus, and in December, 1965, while his appeal was pending before the Court of Appeals for the Tenth Circuit, an order was filed in the state court sustaining the trial attorney's motion to withdraw from the post-conviction proceeding and appointing another attorney to represent Smith. At approximately the same time the record on appeal from the state trial court was docketed in the Kansas Supreme Court. Thus, at the time the Court of Appeals for the Tenth Circuit issued its decision, more than one year had elapsed since Smith had filed his motion for post-conviction relief and he

had still not been able to present his arguments to the Kansas Supreme Court. Over the objection that Smith had failed to exhaust his pending state court remedy, the Court of Appeals declared:

"The federal courts have the inescapable duty to entertain a solid claim of an unconstitutional restraint by a state under color of its law, and jurisdiction is not defeated by anything which may occur in the state proceedings. See *Fay v. Noia*, supra, 372 U.S. 426, 83 S.Ct. 822; *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770; *Chase v. Page*, 10 Cir., 343 F.2d 167, 171. Consistently with these inexorable principles we have recognized that inordinate delay in the adjudication of an asserted post-conviction remedy may very well work a denial of due process cognizable in the federal court. See *Kelly v. Crouse*, 10 Cir., 352 F.2d 506."

356 F.2d at 656. The Court of Appeals then reversed and remanded the case to the trial court "with directions to take such steps as it deems necessary to secure petitioner's right to a prompt hearing on his claim of unconstitutional restraint." *Id.* at 657. See also *Jones v. Crouse*, 360 F.2d 157 (10th Cir. 1966) (eighteen-month delay in appeal from denial of motion for post-conviction relief); *Dixon v. State of Florida*, 388 F.2d 424 (5th Cir. 1968) (twenty-month delay in post-conviction proceedings); *St. Jules v. Beto*, 462 F.2d 1365 (5th Cir. 1972) (twenty-seven month delay in state habeas corpus proceedings); *United States ex rel. Senk v. Brierley*, 471 F.2d 657 (3rd Cir. 1973) (three and one-half year delay in post-conviction proceedings). Cf. *Tramel v. Idaho*, 459 F.2d 57 (10th Cir. 1972); *Reynolds v. Wainwright*, 460 F.2d 1026 (5th Cir.), cert. denied 409 U.S. 950 (1972); *Rivera v. Concepcion*, 469 F.2d 17 (1st Cir. 1972). As the court stated in *Dixon v. Florida*, supra,

- 10 -

388 F.2d at 426, "We must ever be sensitive both to the basics and to the nuances of judicial federal-state congruency. The concept of federal-state comity involves mutuality of responsibilities, and an unacted upon responsibility can relieve one comity partner from continuous deference. Moreover, the wait for action on the writ must not be so exhausting as to frustrate its purpose. Patience is a virtue in the accommodation process of our federalism, but it is not inexhaustible."

The principle is not limited to collateral proceedings in state courts. In Way v. Crouse, 421 F.2d 145, 146-147 (10th Cir. 1970), the court stated:

"Just as a delay in the adjudication of a post-conviction appeal may work a denial of due process, so may a like delay in the determination of a direct appeal. The question presented here is in what court should petitioner seek vindication of his asserted constitutional grievance. In our view, Way properly resorted to the federal court, which should not, without knowing the facts and circumstances of the eighteen-month delay, have required him at this late date to commence a completely new and independent proceeding through the very courts which are responsible, on the face of the pleadings, for the very delay of which he complains."

See also Dozie v. Cady, 430 F.2d 637 (7th Cir. 1970) (seventeen-month delay in direct appeal); Olsen v. Moore, 445 F.2d 806 (1st Cir. 1971) (thirty-four-month delay in direct appeal: "[W]e confess to a sense of the absurd in saying to one who without success has for nearly three years tried to spur both his court-appointed counsel and, apparently, the courts to action, that he must persevere in perpetuity before he can complain of failure to a federal court." 445 F.2d at 807).

16

Where federal courts have determined that the delays experienced by a federal habeas corpus petitioner in the state courts have been excessive and unjustified, they have found the state corrective process "ineffective to protect the rights of the prisoner," 28 U.S.C. § 2254(b), and have proceeded to the merits of the petition. Where they have further found that the petitioner's conviction was obtained in violation of his constitutional rights, they have granted the writ. In United States ex rel. Johnson v. Rundle, 286 F.Supp. 765 (E.D. Pa. 1968), the petitioner had suffered a delay of nineteen months in post-conviction proceedings following a conviction for rape in state court. With respect to the exhaustion doctrine, the court stated:

"Of course, the theoretical premise assumes that the states will allow the individual to present his claims without overly burdensome procedural snarls and to render decisions on them with reasonable dispatch. If the state does not act so, then the effect of the 'exhaustion doctrine' would be 'to shield an invasion of the citizen's constitutional rights.' Jordan v. Hutcheson, 323 F.2d 597, 601 (C.A. 4, 1963)."

286 F.Supp. at 767. The court found that the delay was "so inordinate as to justify our proceeding to consider the merits." Id. Concluding, further, that petitioner's confession had been involuntary and that its introduction into evidence at petitioner's trial had deprived him of due process of law, the court granted the writ of habeas corpus. See also West v. State of Louisiana, 478 F.2d 1026 (5th Cir. 1973) (seven-month delay in state habeas corpus proceedings);

17

Morgan v. State of Tennessee, 298 F.Supp. 581 (E.D. Tenn. 1969) (nineteen-month delay in state post-conviction proceedings). Cf. United States ex rel. Harper v. Rundle, 279 F.Supp. 1013 (E.D. Pa. 1967); United States ex rel. Carter v. Commonwealth, 330 F.Supp. 593 (E.D. Pa. 1971); Allen v. Leeke, 328 F.Supp. 292 (D. S. C. 1971).

These principles have also been applied by federal courts in this Circuit. In United States ex rel. Lusterino v. Dros, 260 F.Supp. 13 (S.D. N.Y. 1966), the petitioner had applied for federal habeas corpus in February, 1965, alleging that unlawfully seized evidence had been used against him, contrary to Mapp v. Ohio, 367 U.S. 643 (1961), and that admissions to a police officer had been improperly introduced into evidence. The district court denied the petition without a hearing on the grounds that there were state remedies available to the petitioner. In March, 1966, "[p]roceeding with the intermittent assistance of unpaid counsel," the petitioner managed to file a state petition for coram nobis. In June, 1966, the state court ruled that the Mapp issue was unavailable for failure to raise it at trial, but that a hearing should be held on the issue of the admissions to the police officer. The hearing was scheduled for September, 1966, but apparently was delayed further. The petitioner again sought federal habeas corpus. The court said:

"The foregoing chronology is enough to demonstrate that this court should move with all reasonable speed to hear at least petitioner's assertions under Mapp v. Ohio. This would be so even if

18

nothing but the passage of time touched the decision of [the federal district court] almost two years ago. For it is clear that there are sharp limits to the sacrifices men must make upon the altar of comity. In cases of much briefer delay, it has been 'recognized that inordinate delay in the adjudication of an asserted post-conviction remedy may very well work a denial of due process cognizable in the federal court.' *Smith v. State of Kansas*, 356 F.2d 654, 656 (10th Cir. 1966)."

260 F.Supp. at 15-16. The court ordered that a hearing be held on petitioner's claims within four weeks. In a Supplemental Memorandum and Order, the court noted that on the eve of the scheduled hearing, the state had conceded the validity of petitioner's claims under *Mapp v. Ohio*. The court thereupon granted the writ, noting that "[p]roperly administered, the rule barring federal habeas corpus until adequate state remedies have been exhausted implements cherished values of our federal system. The rule withers to a grisly ritual when it is employed for nothing more than delay in the vindication of constitutional rights." *Id.* at 17. See also *United States ex rel. Graham v. Mancusi*, *supra*. Cf. *United States ex rel. Williams v. LaVallee*, 487 F.2d 1006, 1015 n.18 (2d Cir. 1973); *United States ex rel. Hill v. Deegan*, 268 F.Supp. 580 (S.D. N.Y. 1967); *United States ex rel. Goodman v. Kehl*, 456 F.2d 863 (2d Cir. 1972).

C. The Delay In The Instant Case

Whether the delay in the direct appeal in any particular case has been excessive and unjustified will depend, of course, upon the specific circumstances presented. On their face the

- 14 -

Connecticut appellate procedures do not appear to provide for an inordinately lengthy process. An appeal must be filed within twenty days from the date of judgment, which in a criminal case is the date sentence is pronounced in open court.^{15/} The party appealing must file with his appeal a request for a finding and a draft finding containing a statement of what each party offered evidence to prove, the questions of law and, to test rulings on evidence, the specific portion of the trial record which disclosed the context in which the ruling was made.^{16/} Ten days after the request for finding and draft finding are filed, the appellee must file a draft counterfinding.^{17/} Both the draft finding and the draft counterfinding must make appropriate references to the pages of the transcript of the trial.^{18/} Thereafter the trial court must file its finding within two weeks, "unless it is unable to do so, in which case it shall file it at the earliest practicable time."^{19/} Corrections to the court's finding must be filed "as soon as practicable."^{20/} Within ten days from

^{15/} Connecticut Practice Book § 601.

^{16/} Connecticut Practice Book §§ 613, 614, 629, 630.

^{17/} Connecticut Practice Book §§ 615, 631.

^{18/} Connecticut Practice Book §§ 613, 614, 615, 629, 630, 631, 641.

^{19/} Connecticut Practice Book §§ 618, 634.

^{20/} Connecticut Practice Book §§ 626, 636.

the filing of the finding, the appellant must file his assignments of error.^{21/} When the assignments of error are filed, the record of the case is complete and is docketed with the Connecticut Supreme Court.^{22/} The appellant must then file his brief within forty-five days, the appellee's brief is due thirty days thereafter, and a reply brief may be filed within the next twenty days.^{23/} Thus, if all of these steps are taken in time, one hundred forty-nine days are allotted to counsel for preparation of the record and briefs. After the briefs are filed, the case is assigned for oral argument.^{24/}

While the appellate procedures theoretically provide for a final determination of a direct appeal within approximately six months, the procedure apparently works very differently in practice. The petitioner has submitted statistical tables representing the timetable of review of the seventy criminal appeals decided by the Connecticut Supreme Court between November 4, 1970, and December 18, 1973. The tables are not controverted or challenged by the state. The data

^{21/} Connecticut Practice Book § 612.

^{22/} Connecticut Practice Book § 683.

^{23/} Connecticut Practice Book § 724.

^{24/} Connecticut Practice Book § 711.

5/
Id.

6/
Id.

8

- 16 -

indicate that during the three years covered by the tables, no criminal appeal taken by a defendant has received final determination by the Connecticut Supreme Court in less than thirteen months after a notice of appeal was filed.^{25/} Moreover, less than ten per cent of the criminal appeals by defendants decided during the three-year period were decided in less than eighteen months.^{26/} Slightly more than half the appeals were decided in eighteen to thirty months, and almost forty per cent of the appeals were pending more than thirty months before final decision.^{27/} The average length of time for a criminal appeal by a defendant was approximately thirty months.^{28/} By contrast, the average time for adjudication of an appeal in New Jersey, during 1971-72 was 15.3 months.^{29/} In the federal system, during fiscal year 1973, the average time for an appeal from filing of notice of appeal in the lower court to final disposition was 8.8 months; in the Second Circuit, 6.1 months; in the District of Columbia Circuit,

25/
See Table I to Petitioner's Brief.

26/
See Appendix B to Table I to Petitioner's Brief.

27/
Id.

28/
See Table I to Petitioner's Brief.

29/
Annual Report of the Administrative Director of the Courts of the State of New Jersey, pp. 8-9 (1973).

22

which had the longest period for processing of appeals, 13.5 months.^{30/}

The affidavits and statistical material submitted by the petitioner indicate some of the factors contributing to the extraordinary delays experienced by criminal defendants in

30/

The amount of time required for the processing of an appeal in the federal system may be seen from the following table:

<u>Circuit</u>	<u>Filing of Notice of Appeal in Lower Court to Filing of Complete Record in App. Court*</u>	<u>Filing Com- plete Record to Disposition**</u>	<u>Total</u>
D.C.	1.8	11.7	13.5
1	0.2	5.1	5.3
2	1.3	4.8	6.1
3	1.3	8.9	10.2
4	1.4	5.8	7.2
5	1.5	4.9	6.4
6	2.7	7.0	9.7
7	2.3	11.1	13.4
8	2.5	4.5	7.0
9	2.3	7.3	9.6
10	<u>2.3</u>	<u>6.3</u>	<u>8.6</u>
Average	1.8	7.0	8.8

*Administrative Office of the United States Court, Annual Report of the Director 1973, at p. A-7, Table B5.

**Administrative Office of the United States Courts, Management Statistics for United States Courts 1973, at p. f.

The Connecticut Supreme Court does not hear oral argument during July, August and September. Thus, the petitioner could not be heard on his direct appeal until some time during the October 1974 Term of the Connecticut Supreme Court, at the

- 18 -

the Connecticut appellate process. Court reporters are scheduled to work in the state courts from 10:00 a.m. to 5:00 p.m. Tuesday through Friday. Preparation of transcripts must therefore be done at night, on weekends, or on Mondays. As a consequence, trial transcripts, which must be completed before draft findings and draft counterfindings can be submitted, regularly take several months to complete.^{31/} There are further delays of several months while the draft findings are being drawn up by attorneys for the appellants.^{32/} Once the draft findings are filed, there are generally further delays of several months before the State's Attorneys prepare and file their draft counterfindings. Then the trial judges must find time amid the welter of ongoing court business to draw up their findings in all of their cases being appealed.^{33/}

^{31/}

Affidavit of Joan E. Pagliuco, supra note 2.

^{32/}

The petitioner's statistics indicate that in approximately 28% of the criminal appeals, draft findings were filed up to two months after notice of appeal was filed; in almost 38% of the appeals, draft findings were filed between three and seven months after notice of appeal was filed; in the remainder of the appeals, one third of the total number of appeals, draft findings were filed eight months or more after notice of appeal was filed. See Table V to Petitioner's Brief. Former Chief Justice Maltbie states that the granting of extensions of time for the filing of requests for findings and draft findings is "the general rule." Maltbie, Appellate Procedure in the Supreme Court of Errors of Connecticut 156 (2d ed. 1957).

^{33/}

The Petitioner's statistics indicate that in less than 22% of the criminal appeals, findings were filed up to two months after the draft findings were filed; in half of the appeals, findings were filed three to seven months after the draft findings were filed; in the remaining 28% of the appeals, findings were filed eight months or more after the draft findings were filed. See Table VI to Petitioner's Brief.

Apparently Connecticut is the only jurisdiction in the nation to require this time-consuming preparation of a finding.^{34/}

The delay suffered by the petitioner in this case is not extraordinary. That does not make it any more justifiable. It is evident from the foregoing that criminal defendants appealing their convictions in the courts of Connecticut experience, as a rule, very lengthy delays in the appellate

^{34/}

Petitioner's Brief, p. 6; Table IV to Petitioner's Brief.

The "finding" does not have any intrinsic value. If the purpose of the finding is specification of the issues raised on appeal, see Maltbie, supra note 30, at 157, there is no reason why that purpose cannot be adequately served by the procedure utilized in other jurisdictions involving submission of briefs by the parties along with a stipulated record consisting of those portions of the record below which reveal the exact situation in which the issue being appealed arose and was ruled upon. The transcript of what occurred upon the trial is the underlying and basic record in any event. Whenever a "finding" is challenged the court is required to go to that record anyway.

The Connecticut judiciary apparently has its own doubts as to the utility of the "finding" in the state appellate process. In recently proposed changes to the appellate rules, the number of situations in which a finding will be required may be substantially reduced. The proposed rules provide that in a jury case there will be no finding, nor will an appendix be required, except under the following circumstances:

"If in the course of a case tried to the jury an issue is presented which requires a decision by the trial judge, a party adversely affected by any such decision may request a finding of fact as to that issue for appeal in accordance with the procedure for an appeal in a court case."

"Proposed Changes in Appellate Rules: Appeals in Jury Cases," 35 Conn. L.J. 2B (November 13, 1973). This is apparently designed to cover a situation where something relevant to a case occurred de hors the record, e.g., outside communication with a juror during the course of a trial. See generally, Clark, Judicial Reform in Connecticut, 5 Conn. L. Rev. 1 (1972).

process. The preparation of the record by counsel and the trial court, which the rules contemplate shall be completed in fifty-four days, generally takes four to six times that amount of time. And, regrettably, this processing of a record by proliferating a finding into it does not serve its vaunted purpose of framing the issues more correctly. See note 34, supra. In actual operation the "finding" is redundant. Indeed, the data indicate that a state prisoner sentenced to a relatively short prison term is effectively deprived of any direct appeal whatsoever, since he will very likely complete his sentence before his case is reviewed.^{35/}

The three and one-half year period during which the direct appeal in the instant case has been pending, although somewhat longer than the average, is by no means unique among Connecticut cases. Nevertheless, this delay in adjudicating the petitioner's rights is clearly inordinate and excessive: it certainly offends the "limits to the sacrifices men must make upon the altar of comity." United States ex rel. Lusterino v. Dros, supra, 260 F.Supp. at 16. As the United

^{35/}

The United States Supreme Court has taken note of such a situation:

"Arguably . . . if the prisoner could make out a showing that, because of the time factor, his otherwise adequate state remedy would be inadequate, a federal court might entertain his habeas corpus application immediately, under § 2254(b)'s language relating to 'the existence of circumstances rendering such [state] process ineffective to protect the right of the prisoner.' But we need not reach that issue here."

Preiser v. Rodriguez, 411 U.S. 475, 497 (1973).

States Supreme Court declared in Bartone v. United States, 375 U.S. 52, 54 (1963), "Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, federal courts have no other choice but to grant relief in the collateral proceedings." Cf. Hunt v. Warden, Maryland Penitentiary, 335 F.2d 936, 940-941 (4th Cir. 1964).

The state argues that this Court should not proceed to the merits of petitioner's claims because he has other available state remedies, i.e., state habeas corpus, Conn. Gen. Stats. § 52-466, and motion to set aside the judgment for lack of diligence in defending the appeal, Connecticut Practice Book § 696.

The petitioner is not required, as a matter of law, to seek collateral state remedies while his direct appeal is pending. As noted above, "once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied." Picard v. Connor, supra, 404 U.S. 270, 275 (1971). The Supreme Court stated in Wilwording v. Swenson, supra, 404 U.S. 250:

"Petitioners are not required to file 'repetitious applications' in the state courts. Brown v. Allen, 344 U.S. 443, 449 n.3 (1953). Nor does the mere possibility of success in additional proceedings bar federal relief. Roberts v. LaVallee, 389 U.S. 40, 42-43 (1967); Coleman v. Maxwell, 351 F.2d 285, 286 (CA6 1965).

And our own Court of Appeals has held, "Under the traditional concepts of exhaustion only one opportunity through proper channels need be afforded a state to pass upon a question

27

before the [federal] habeas court should look at the merits." United States ex rel. Weinstein v. Fay, 333 F.2d 815, §19 (2d Cir. 1964). Having fairly presented his claims to the state courts by taking the route of a direct appeal, petitioner was not required to pursue alternate state avenues of relief at the same time.

Moreover, the collateral remedies cited by the state appear to be illusory. While some forms of relief may be available to a defendant while his direct appeal is pending,^{36/} the clear rule in Connecticut is that state habeas corpus "cannot be utilized as a substitute for an appeal of the original action, or for a writ of error, or for a petition for a new trial. In re Bion, 59 Conn. 372, 386, 20 A. 662. It may not be employed to review irregularities or errors of procedure or questions as to the sufficiency of evidence. Perell v. Warden, 113 Conn. 339, 342, 155 A. 221" Wojculewicz v. Cummings, 143 Conn. 624, 628 (1956). See United States ex rel. DeNegris v. Menser, 247 F.Supp. 826, 829 (D. Conn. 1965), aff'd 360 F.2d 199 (2d Cir. 1966). An exception has been carved out of this rule for prisoners presenting federal

^{36/}

A state prisoner may petition for a new trial on the ground of newly discovered evidence, Conn. Gen. Stats. § 52-270, while his direct appeal is pending. Dortch v. State, 142 Conn. 18 (1954). The petition for a new trial is not available to petitioner in the instant case: he does not claim to have found new evidence, and in any event petitions for a new trial must be brought within three years of the date of the judgment complained of, Conn. Gen. Stats. § 52-582.

28

constitutional claims who have not taken a direct appeal:

"We hold, therefore, that a petitioner may collaterally raise federal constitutional claims in a habeas corpus proceeding even though he has failed to appeal his federal constitutional claims directly to us if he alleges and proves, by a fair preponderance of the evidence, facts which will establish that he did not deliberately bypass the orderly procedure of a direct appeal."

Vena v. Warden, 154 Conn. 363, 366-367 (1966) (emphasis added)

Since petitioner's direct appeal is still pending, it is evident that state habeas corpus would not lie. Because petitioner has presented his claims on direct appeal, the Vena doctrine is not applicable to his case.

The motion to set aside the judgment under § 696 of the Practice Book may be granted "[i]f a party shall fail to defend against an appeal or writ of error with proper diligence. . . ." Theoretically the motion might be used by a defendant whose direct appeal was being delayed, or ignored, by the state. In practice, however, the motion has rarely been granted on behalf of a defendant in a criminal appeal:^{37/} there do not appear to be any reported decisions in which it has been granted to set aside the judgment of a defendant convicted in Superior Court. Furthermore, the only grounds upon which the petitioner could claim lack of diligence on the part of

^{37/}

A survey of the reported cases reveals only two instances in which the motion has been granted against the state, State v. Fenster, 151 Conn. 729 (1963), and State v. Stanley, 157 Conn. 625 (1969), but in both of these cases the appeals were from the Circuit Court and the judgments had been affirmed by the Appellate Division of the Circuit Court.

29

the state would be in regard to the eleven extensions of time moved for and received by the State's Attorney for the filing of the counterfinding, which extended the appeal from January 3, 1972, to January 5, 1973. The extensions of time, which may be granted under § 665 of the Practice Book "for good cause shown," were all ordered by the trial judge.^{38/} In State v. Ward, 134 Conn. 81 (1947), where the trial court had granted several extensions of time for the filing of the requests for findings, the counterfinding, and the assignments of error, the Connecticut Supreme Court stated:

"The various extensions of time granted by the trial court for filing appeal papers were made under provisions of the rules of court authorizing such action 'for good cause shown.' We must, in considering this motion, regard the extensions as properly granted, and as all papers were filed within the times fixed in them we cannot consider the failure by the defendants to file them earlier in determining whether they have prosecuted the appeals with reasonable diligence."

^{38/}

Petitioner's appellate counsel did not object to these extensions because the State's Attorney on the case had complained "that he was overworked, that he was receiving insufficient help, that he was then working nights and taking work home on weekends." Moreover, the appellate counsel had several times objected to the granting of extensions of time in Connecticut appeals, and "these motions for time extensions had nevertheless been summarily granted. Thus [he] felt that such opposition would be futile, and would serve no purpose other than to irritate [the State's Attorney] who could not, without additional assistance, move the case along more quickly." Affidavit of John R. Williams, counsel for John Wesley Ralls in his appeal to the Connecticut Supreme Court, dated January 25, 1974. In view of "the general rule" allowing extensions of time, see note 30 supra, it is highly unlikely that objections to the granting of extensions of time for filing papers would have been sustained.

134 Conn. at 83-84 (emphasis added). Certainly a habeas corpus petitioner cannot be required to pursue state remedies where such efforts will be futile. United States ex rel. Hughes v. McMann, 405 F.2d 773, 775-776 (2d Cir. 1968); Perry v. Blackledge, 453 F.2d 856, 857 (4th Cir. 1971), cert. granted 42 U.S.L.W. 3226 (Oct. 15, 1973). Cf. Roberts v. LaVallee, 389 U.S. 40, 42-43 (1967).^{39/}

Finally, the fact that the petitioner's appellate counsel did not object to the extensions of time requested by the State's Attorney between January 3, 1972, and January 5, 1973,^{40/} does not vitiate the delay experienced by the

^{39/}

The state relies upon Roberson v. Robinson, Civil No. E-180 (D. Conn. November 9, 1973), for the proposition that § 696 of the Practice Book is an adequate state remedy available to the petitioner. In Roberson the petitioner sought federal habeas corpus, claiming that his direct appeals from his two state court convictions had been pending more than two years and that the state had not yet even filed counterfindings in the cases. Judge Clarie dismissed the petition for failure to exhaust state remedies, noting that "Section 696 of the Connecticut Practice Book provides the petitioner with a plain, speedy, and efficient state court remedy." Id. at p. 7. When Roberson returned to the Connecticut Supreme Court and filed a motion to set aside the judgment pursuant to § 696 of the Practice Book, Judge Clarie's faith in the Connecticut appellate process was unfulfilled. At oral argument on the motion on January 2, 1974, the State's Attorney stated that the counterfinding on the first conviction was being typed and would be filed within a few days. He also stated that the counterfinding on the second conviction was far from completion. Affidavit of John R. Williams, appellate counsel for Jasper Roberson, dated April 5, 1974. The Connecticut Supreme Court granted the motion as to the first conviction unless the state filed its counter-finding on or before January 22, 1974, and denied the motion as to the second conviction. State v. Roberson (Conn. Sup. Ct. January 2, 1974), 35 Conn. L.J. 8 (January 15, 1974).

^{40/}

See note 39, supra.

31

petitioner. The petitioner contends that he was unaware of such extensions of time and that he would have objected had he been aware of them:^{41/} at any rate, in the absence of purposeful procrastination on the part of the petitioner and his attorney, dilatoriness of petitioner's counsel in his direct appeal will not preclude the federal court from considering the merits of a habeas corpus petition, Olsen v. Moore, supra, any more than will delay in the availability of the trial transcript, United States ex rel. Johnson v. Rundle, supra, 286 F.Supp. at 768, or delay occasioned by withdrawal of a defendant's original appellate attorney, Smith v. State of Kansas, supra, 356 F.2d at 656, or delay resulting from the presence of other cases on the docket of the appellate court, Morgan v. State of Tennessee, supra, 298 F.Supp. at 583. As the court said in United States ex rel. Johnson v. Rundle, supra, regarding the unavailability of the trial transcript for approximately ten months: "This does not excuse the state's delay. It merely shifts the onus from the state judiciary to another arm of the state. And it is the entire state system that we look to in determining whether there has been inordinate delay." 286 F.Supp. at 768.

In view of the foregoing, it is evident that the state court remedies are "ineffective to protect the rights of the [petitioner]," 28 U.S.C. § 2254(b), and that this Court should

^{41/}

Affidavit of John Wesley Ralls, dated January 23, 1974.

proceed to a consideration of the merits of his petition. To do otherwise "might well invite the reproach that it is the prisoner rather than the state remedy that is being exhausted," United States ex rel. Kling v. LaVallee, 306 F.2d 199, 203 (2d Cir. 1962) (concurring opinion), quoted in United States ex rel. Graham v. Mancusi, supra, 457 F.2d at 467, and in United States ex rel. Williams v. LaVallee, supra, 487 F.2d at 1015 n.18. This determination to proceed to the merits of the petition does not reward dilatoriness of counsel or offer the federal habeas courts as a substitute for the Connecticut direct appeal process. The petitioner has languished in prison for almost three and one-half years without having his claims ruled upon by any court, and the end, in the state courts, is not yet in sight: there is no indication whatsoever in the record that his appellate counsel has sought delay for its own sake or that petitioner has simply sought to circumvent the state appellate process. Compare United States ex rel. Wilson v. Rowe, 454 F.2d 585 (7th Cir. 1971), cert. denied 406 U.S. 909 (1972). It is evident that substantial numbers of Connecticut defendants are experiencing protracted delays in the direct appeals of their state convictions. The state has important interests at stake in the exhaustion doctrine,^{42/}

^{42/}

"As applied in our earlier decisions, the doctrine

'preserves the role of the state courts in the application and enforcement of federal law. Early federal intervention

but these interests are ill-served when they are vindicated at the expense of the rights of individuals. Each petition for a writ of habeas corpus must of course be reviewed independently by the federal district court. "Delay that would be 'inordinate' in Kansas may be reasonable and unavoidable in Philadelphia." United States ex rel. O'Halloran v. Rundle, 260 F.Supp. 840 (E.D. Pa. 1966). If a substantial period of time has elapsed since the notice of appeal was filed and the Connecticut Supreme Court has not rendered a decision in the petitioner's case, a number of factors must be assessed in order to determine whether the delay in the particular case has been excessive and unjustified, including: the length of the trial and of the trial transcript, delays in completion of the transcript, the number and complexity of the issues

42/ continued

in state criminal proceedings would tend to remove federal questions from the state courts, isolate those courts from constitutional issues, and thereby remove their understanding of and hospitality to federally protected interests. Second, [the doctrine] preserves orderly administration of state judicial business, preventing the interruption of state adjudication by federal habeas proceedings. It is important that petitioners reach state appellate courts, which can develop and correct errors of state and federal law and most effectively supervise and impose uniformity on trial courts.'

Note, Developments in the Law--Federal Habeas Corpus, 83 Harv L Rev 1038, 1094 (1970)."

Braden v. 30th Judicial Circuit Court of Kentucky, supra, 410 U.S. at 490-491.

raised on appeal by the defendant, the number and length of extensions of time granted to the defendant's counsel or to the State's Attorney for the filing of appeals papers, and the failure of the defendant's counsel or the State's Attorney to process the appeal with due diligence. While the court must weigh each of these factors as appropriate, it is expected that federal habeas petitions evidencing state appellate delays of eighteen months or more without a final determination by the Connecticut Supreme Court will be reviewed with particular scrutiny in order to insure that the rights of state defendants in criminal appeals are not unconstitutionally impaired. United States ex rel. Lusterino v. Dros, supra; United States ex rel. Johnson v. Rundle, supra; Way v. Crouse, supra; Dozie v. Cady, supra. See Note, Developments in the Law--Federal Habeas Corpus, 83 Harvard L. Rev. 1038, 1098 (1970). To the extent that this policy heightens the responsibility of state trial judges to be less disposed to grant numerous extensions of time to attorneys for the filing of appeals papers, and sharpens the responsibility of appellate counsel and State's Attorneys to treat criminal appeals with dispatch, the interests of justice will be that much better served. Implementation of the proposed changes in the Connecticut appellate rules,^{43/} reducing the time-consuming preparation of the "finding," may go a long way toward remedying a situation which is at best depressing and at worst intolerable.

^{43/}
See note 34, supra.

35

II. PETITIONER'S SUBSTANTIVE CLAIMS

The petitioner claims that his constitutional rights were denied at his trial in several respects: (1) that the jury was improperly informed of his prior arrests; (2) that the trial judge's instructions to the jury applied improper pressure on the jury to agree to a verdict; (3) that statements made by the petitioner at the time of his arrest were improperly admitted for consideration by the jury; (4) that he was denied effective assistance of counsel before and during his trial; and (5) that unconsented-to substitution of defense counsel during the jury deliberations and the rendering of the verdict denied him the effective assistance of counsel. Because of the Court's conclusions regarding the first two claims urged by the petitioner, it is unnecessary to consider the remaining claims.^{44/}

A. Evidence Of Petitioner's Prior Arrests

During the state's case in chief, while the State's Attorney was conducting his direct examination of Sergeant James E. McDonald of the Connecticut State Police Department Bureau of Identification, the following occurred:

44/

The parties agreed to dispense with the taking of oral evidence at a hearing and instead to submit this case for decision upon the pleadings, briefs, stipulations, affidavits, and exhibits submitted by counsel. These materials were to be submitted in accordance with a schedule contained in an Order of this Court dated January 11, 1974. The parties subsequently

36

44/ continued

agreed to extend this schedule by two weeks. The petitioner submitted an extensive brief covering the exhaustion question and the issues on the merits. However, after obtaining an additional extension of time for the filing of its brief "due to the complexity of the issues involved," the respondent has limited its arguments to the issue of exhaustion of state remedies and has "respectfully declined" to discuss the substantive constitutional issues raised by the petition. Respondent's claim that the issues "should remain before the Connecticut Supreme Court" notwithstanding, this Court would clearly not be justified in acceding to still more delay in the consideration of petitioner's claim, and therefore it now proceeds to the substantive issues.

37

Q Showing you this fingerprint card, Sergeant, can you tell me whose fingerprint card that is?

A This is a fingerprint card of John Ralls, which was on file at the Bureau of Identification, also C.S.P.I. 227299.

Q What is the C.S.P. number?

A It is a central bureau for all the criminal arrest records in the State of Connecticut.

Q All right.^{45/}

At that point the trial judge spoke to the jury regarding Sgt. McDonald's testimony:

THE COURT: Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It doesn't affect this case, nor is it introduced for that purpose. ^{46/}

The defendant's counsel then asked that the jury be excused, and in the absence of the jury requested a mistrial. The trial judge denied the motion, stating:

As I say, I think I could duly caution the jury on it. I don't feel it is grounds enough for me, at this point, to declare a mistrial, but I think it is dangerously real close to it. ^{47/}

When the members of the jury returned, the trial judge again

^{45/}
Transcript, p. 82.

^{46/}
Id.

^{47/}
Transcript, p. 83.

spoke to them about Sgt. McDonald's testimony:

I want to caution the jury again, that I don't know what the extent it covers, whether it might have been an application for employment. You are not to give it any more weight than that. This man is being tried here on this case only. 48/

The fingerprint card was then marked and received into evidence as a State's exhibit.

It is evident that, as a result of this exchange, the fact that the petitioner had a record of prior arrests was before the jury. If there was any doubt in the mind of any member of the jury as to the petitioner's prior record, it was certainly dispelled by the fingerprint card itself. On the front side of the card the name, race, and sex of the petitioner are listed and the petitioner's fingerprints and signature appear. On the reverse side of the card, a white sheet of paper covered the central area, but three printed items were apparent. At the top left corner of the card was the following: "Connecticut State Police, Hartford 1, Conn." At the top right corner of the card appeared, "STATE BUREAU of IDENTIFICATION." At the bottom of the card, just below the white sheet covering the central portion of the card, was the statement, "Please furnish all additional criminal history and police record on separate sheet."^{49/} The jury was surely

48/

Transcript, p. 84.

49/

Exhibit 1 to Petitioner's Brief (emphasis added).

led to the conclusion that the white sheet over the central portion of the card covered entries indicating petitioner's "criminal history and police record." The petitioner did not testify at the trial, nor did he otherwise put his character in evidence.

The courts have long recognized that proof of other crimes committed by a defendant may prejudice the defendant with the members of the jury and deny him a fair trial. As the Supreme Court stated more than eighty years ago:

"Proof of [other crimes committed by the defendants] only tended to prejudice the defendants with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no real value to the community, and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving punishment of death."

Boyd v. United States, 142 U.S. 450, 458 (1892). In Michelson v. United States, 335 U.S. 469 (1948), the Court made it clear that unless the defendant himself opens up the issue of his character, the prosecution is absolutely prohibited from introducing any evidence on the subject. Thus, as a general rule, the law

"simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to

prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice."

Id. at 475-476 (footnotes omitted).

The Court of Appeals for the Second Circuit has recently had occasion to discuss this issue in a case very similar to the instant case. In United States v. Harrington, 490 F.2d 487 (2d Cir. 1973), the prosecution had attempted to bolster the testimony of a government witness who had failed to make an in-court identification of the defendant by having the witness duplicate, before the jury, an identification from "mug shot" photographs which he had previously made out of court. After objection by counsel for the defendant, and an ordered alteration of the photographs by the trial judge, all in full view of the jury, the photographs were admitted into evidence.

The Court of Appeals succinctly summarized the issues and the applicable law:

"An examination of the issue proceeds from the recognition of a basic tenet of our criminal law. If, at his trial, a defendant does not take the witness stand in his own defense, or if he has not himself been responsible for causing the jury to be informed about his previous convictions, he is entitled to have the existence of any prior criminal record concealed from the jury. The defendant's right to this protection is so well understood that discussion of it is unnecessary. However, this protection may be lost by unexpected trial occurrences such as occurred here when the prosecution sought to salvage an identification by confronting its witness with appellant's photographs. That the introduction of photographs of

a defendant may well be equivalent to the introduction of direct evidence of a prior criminal conviction has been articulated in a number of recent opinions which have recognized that the introduction of certain photographs may result in getting before the jury the fact that the defendant has a prior record, and so has deprived the defendant of his right to a fair trial."

490 F.2d at 490. Relying primarily upon Reed v. United States, 376 F.2d 226 (7th Cir. 1967), United States v. Harman, 349 F.2d 316 (4th Cir. 1965), and Barnes v. United States, 365 F.2d 509 (D.C. Cir. 1966), the court specified three conditions which must exist if the introduction of "mug shot" type photographs is not to deny a defendant a fair trial:

- "1. The Government must have a demonstrable need to introduce the photographs; and
2. The photographs themselves, if shown to the jury, must not imply that the defendant has a prior criminal record; and
3. The manner of introduction at trial must be such that it does not draw particular attention to the source or implications of the photographs."

United States v. Harrington, supra, 490 F.2d at 494. Looking at the facts of the case before it, the court concluded that the failure of the government witness to make the in-court identification provided a "demonstrable need" to introduce the photographs. With respect to the second condition, the court stated:

"In this regard, it is helpful to recall Judge Leventhal's discussion in Barnes that the 'double-shot' picture produces a 'natural, perhaps automatic' inference of prior encounters with the police and that crude and inartful masking of these pictures heightens, rather than diminishes, their significance to the jury. 365 F.2d at 510-511. The photographs herein were

'masked,' but in a grossly incompetent fashion. Without basing our resolution of appellant's 'mug shot' contention on the second element of the test we propose, we think that the preferable course of action when mug shots are to be introduced would be to produce photographic duplicates of the mug shots. These copies would lack any incriminating indicia--i.e., inscriptions or identification numbers, and they could also avoid use of the juxtaposed full face and profile photographic display normally associated with 'mug shots.'"

490 F.2d at 495. Finally, the court noted that the entire discussion regarding the photographs took place in full view of the jury, and that when the trial judge ordered the court clerk to mask the pictures, "the jury's attention by this time was undoubtedly riveted on them." Id. (footnote omitted). The court therefore concluded that the defendant had been denied a fair trial and reversed and remanded for a new trial.

It is irrelevant, of course, whether the jury is led to believe that the defendant has a prior arrest record by the improper introduction of "mug shot" photographs or of a State Police Bureau of Identification fingerprint card. Applying the three conditions governing the introduction of such items set forth in Harrington, it is evident at the outset that there was no "demonstrable need" for the introduction of the Bureau of Identification fingerprint card in the condition and manner in which it was introduced at the trial. If the State was seeking to show that latent prints found during the course of police investigation in the case compared favorably with those of the defendant, it could easily have had the defendant's fingerprints taken on a plain white sheet

of paper. If the State was seeking to demonstrate that Sergeant McDonald had himself compared the latent prints with those of the petitioner on the Bureau of Identification card,^{50/} it was obligated to cover the entire card or to make duplicates of the petitioner's fingerprints, as suggested in Harrington, supra, 490 F.2d at 495, and to insure that its direct examination of its own witness would not indicate that the defendant had a prior arrest record. There were no circumstances at the trial similar to the failure of identification by the government witness which occurred in Harrington.

With respect to the second condition noted in Harrington, it is clear beyond doubt that the fingerprint card implied that the defendant had a prior criminal record. Both the testimony of Sergeant McDonald regarding the "C.S.P. number," and the printed material on the reverse side of the card indicated ineluctably that the defendant had a prior arrest record. Finally, with respect to the third Harrington condition, the manner in which the fingerprint card was introduced at trial drew even more attention to the implications of the card than had the introduction of the photographs in Harrington. At the petitioner's trial the judge's first cautionary instruction to the jury emphasized that the defendant had a prior record, "whatever it was" and despite the fact that "it might have been just a minor matter." When

^{50/}

Transcript, p. 83.

the defendant's counsel then asked that the jury be excused, the issue of the prior record became even more prominent. Finally, the trial judge emphasized the prior record again by giving the jury a second cautionary instruction. It would strain credulity to the breaking point to believe that the judge's weak and belated disclaimer, "I don't know what the extent it covers, whether it might have been an application for employment," had any real effect on the jury's perceptions. "The naive assumption that prejudicial effects can be overcome by instructions to the jury . . ., all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 335 U.S. 440, 453 (1949) (Jackson, J., concurring).

The cases relied upon by the Court of Appeals in Harrington support the conclusion that the petitioner in the instant case was denied a fair trial. In Barnes v. United States, supra, the government introduced two photographs of the defendant in an attempt to bolster the testimony of one of its witnesses. The first photograph was a "full-length snapshot of an ordinary nature," but the second was "a typical 'mug shot' from a police department 'rogues gallery.'" 365 F.2d at 510. The numbers on the mug shot were covered with adhesive tape and the writing on the back was covered by paper. The defendant's counsel objected to the introduction of the pictures, and, although he allowed the pictures to be admitted, the trial judge told the jury that he was reluctant to allow them to take the pictures into the jury room for fear

45

that one of them might inadvertently remove the paper covering on the back of the mug shot. The Court of Appeals stated, "It is well-settled law that the criminal record of a defendant may not be introduced into evidence at trial unless the defendant takes the stand or otherwise places his character in issue. A photograph which on its face reveals the existence of such a criminal record is likewise inadmissible when the defendant's character has not been placed in issue." Id. at 510 (footnotes omitted). As the court in Harrington noted, Barnes apparently turned on two considerations: that the introduction of the mug shot was unnecessary, in view of the introduction of the "snapshot of ordinary nature," and that the method of introduction of the photograph and the coverings on the mug shot itself emphasized the implications of the photograph:

"The rudimentary tape cover placed over the prison numbers on the photograph, and over the notations on the reverse side, neither disguised the nature of the picture nor avoided the prejudice. If anything, by emphasizing that something was being hidden, the steps taken here to disguise the nature of the picture may well have heightened the importance of the picture and the prejudice in the minds of the jury."

Id. at 511.

Similarly, in United States v. Harman, supra, where unaltered mug shots were introduced at trial, the court stated:

"Since Harman did not testify or put his character in issue, of course, any evidence of a previous conviction would have been inadmissible. This case does not come within any exception to this general rule. Particularly in whiskey cases,

evidence of previous convictions is highly detrimental to a defendant's chances of acquittal. This is especially true when the defendant does not testify. In this case, as to defendant's failure to testify, the District Judge charged the jury fully and fairly. It is doubtful that anything the judge might have said could have removed the prejudice created by the introduction of these pictures, but in his charge, the District Judge did not mention them at all. It is our conclusion that the introduction of these pictures in evidence was error, constituted serious prejudice to the cause of the defendant, and thus deprived him of a fair trial."

349 F.2d at 320. And in United States v. Reed, supra, the court held that testimony regarding a "mug shot" of the defendant, i.e., "[a photograph] of [a former inmate] of the state prison," 376 F.2d at 227,

"... vitiated his right to be presumed innocent until proven guilty and was prejudicial error. Repeated objections to this testimony were sustained, but the testimony remained. This testimony made the difference between the trial of a man presumptively innocent of any criminal wrongdoing and the trial of a known convict. His right not to take the stand in his own defense was substantially destroyed. His past record could not have been directly shown by the prosecution as part of its case to prove bad character since Reed's character was not in issue. The testimony did this indirectly.

Id. at 228. See also United States v. Dressler, 112 F.2d 972 (7th Cir. 1940); Leigh v. United States, 308 F.2d 345 (D.C. Cir. 1962). Petitioner's case is clearly distinguishable from those in which the issue of the defendant's prior criminal record was opened up or used by the defendant himself, United States v. Frascione, 299 F.2d 824, 828-829 (2d Cir.), cert. denied 370 U.S. 910 (1962); United States v. Silvers, 374 F.2d

47

828 (7th Cir.), cert denied 389 U.S. 888 (1967); United States v. Gimelstob, 475 F.2d 157, 161-162 (3rd Cir.), cert. denied 42 U.S.L.W. 3195 (Oct. 9, 1973), and those in which items introduced for identification purposes did not disclose the defendant's prior record or were unlikely to prejudice the defendant in the eyes of the jury, Sibley v. United States, 344 F.2d 103, 105 (5th Cir.), cert. denied 382 U.S. 945 (1965); Cupo v. United States, 359 F.2d 990, 994 (D.C. Cir. 1966), cert. denied 385 U.S. 1013 (1967); United States v. Calarco, 424 F.2d 657, 660-661 (2d Cir.), cert. denied 400 U.S. 824 (1970); United States v. Jones, 477 F.2d 1213, 1219-1220 (D.C. Cir. 1973). Cf. United States v. Miller, 381 F.2d 529, 536-537 (2d Cir. 1967), cert. denied, 392 U.S. 929 (1968).

In light of the foregoing, it is evident that in the instant case the testimony by Sergeant McDonald regarding petitioner's fingerprint card, the two instructions by the trial judge to the jury, and the card itself, which was introduced into evidence, did not conceal the existence of any prior criminal record of the defendant, but in fact repeatedly called the jury's attention to such record.^{51/} These circumstances "made the difference between the trial of a man

51/

The record does not indicate whether the petitioner did in fact have a prior arrest record. The prejudice to him at his trial, however, did not come from the fact of any record of prior arrests, but by the strong implication that such record existed, engendered by the testimony of Sergeant McDonald, the instructions of the trial judge, and the fingerprint card itself. Indeed, jurors applying common sense could readily conclude that if the defendant did not have a record of prior arrests, there would be no reason to cover the reverse side of the fingerprint card with white paper.

LL 21

35
- 42 -

presumptively innocent of any criminal wrongdoing" and the trial of a man who likely had a criminal record. United States v. Reed, supra, 376 F.2d at 228. Beyond question, the petitioner was clearly prejudiced and was deprived of a fair trial. United States v. Harrington, supra, 490 F.2d at 490.^{52/} Not every evidentiary ruling rises to the magnitude of a constitutional issue. See Wilson v. MacDougall, Civil No. 13,815 (D. Conn. June 19, 1970). Although the issue of petitioner's prior arrest record arose in this case in the context of a ruling on evidence, the highly prejudicial character of the circumstances surrounding the ruling remove it from the class of merely harmful errors and demonstrate that it was so prejudicial as to result in the denial of that fair trial which the Constitution guarantees. There can be no question that the right to a fair trial is guaranteed by the Due Process Clause. As the Supreme Court stated in In re Murchison, 349 U.S. 133, 136 (1955), "A fair trial in a fair tribunal is a basic requirement of due process." See Lisenba v. California, 314 U.S. 219, 236 (1941); Lyons v. Oklahoma, 322 U.S. 596, 605 (1944); Blackburn v. Alabama, 361 U.S. 199, 206 (1960); Gideon v. Wainwright, 372 U.S. 335, 342 (1963);

^{52/}

The instant case is clearly distinguishable from Spencer v. Texas, 385 U.S. 554 (1967), in which the Court upheld procedures by which the jury was informed of the defendant's prior convictions only in the context of enforcement of the state's habitual criminal statutes. In the instant case, the testimony of Sergeant McDonald and the Bureau of Identification fingerprint card did not serve any such "valid state purpose," 385 U.S. at 563, but served only to eliminate the presumption of innocence to which the petitioner was entitled.

49

Washington v. Texas, 388 U.S. 14, 18 n.6 (1967); Ham v. South Carolina, 409 U.S. 524, 526 (1973). Redress for the denial of a fair trial "is within the ambit of habeas corpus." Baker v. Hudspeth, 129 F.2d 779, 781 (10th Cir.), cert. denied sub nom. Baker v. Hunter, 317 U.S. 681 (1942). See United States ex rel. Meers v. Wilkins, 326 F.2d 135 (2d Cir. 1964); Frayer v. Turner, 296 F.Supp. 1256 (D. Utah), aff'd 413 F.2d 546 (10th Cir. 1969); Hernandez v. Nelson, 298 F.Supp. 682, 685-687 (N.D. Calif. 1968), aff'd 411 F.2d 619 (9th Cir. 1969); Hawkins v. Robinson, supra, 367 F.Supp. at 1034, 1036. Since the circumstances surrounding the introduction of the fingerprint card were so prejudicial as to deny the petitioner a fair trial, he is entitled to issuance of the writ.

8.

B. The Trial Judge's Supplemental Instructions to the Jury

Approximately two hours and forty-five minutes after the jury began deliberations, the trial judge called the jury back into the courtroom and the following occurred:

"THE COURT: I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of verdict.

You could readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sit-down dinner?

A JUROR: I think it is going to be a while.

THE COURT: That is all I need to know. You may retire to the jury room, and arrangements will be made. Thank you very much." 53/

The jury then retired to continue its deliberations. Approximately three hours later, the following occurred:

"THE COURT: Resume our session. Call the jury. (Francis J. McQuade, Esquire appeared in Mr. DeMayo's stead.)

THE COURT: Good evening ladies and gentlemen. I sense that you must be having a little difficulty in reaching your verdict. However, as I have told you time and again, your verdict must be unanimous. It is true, of course, that a verdict to which each juror agrees, has got to be his own conclusion and not the mere acquiescence in or the conclusions of his fellows.

That does not mean that each juror should pursue his own deliberations and judgment with no regard for the arguments and conclusions of his fellows, or that having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test its validity by the views entertained by the other jurors.

I am not telling you what to do. I am going to send you back in. Follow that theory, that you will resolve yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same evidence. You may return to the jury room, and I hope it has shed some light. Thank you." 54/

Less than one hour later the jury sent the judge a question,

53/

Transcript, pp. 347-348 (emphasis added).

54/

Transcript, pp. 348-349 (emphasis added).

51

"In the case of a murder one verdict, are we the sole judges of penalty of life imprisonment or death?"^{55/} The judge replied in the affirmative, and ten minutes later the jury brought in a verdict of guilty of murder in the second degree.^{56/} The petitioner does not challenge the propriety, per se, of a trial judge's giving supplemental instructions to a deadlocked jury, and with good reason. The Supreme Court long ago held that such instructions do not in themselves violate a defendant's constitutional rights. United States v. Allis, 155 U.S. 117, 123 (1894). Rather, the petitioner contends that the supplemental instructions were given "[w]ithout any indication of a jury deadlock,"^{57/} and that the instructions coerced the jury into rendering a verdict and thereby deprived him of due process of law.

The problem facing a trial judge when a jury is experiencing difficulty reaching a verdict "is by no means new." United States v. Bailey, 468 F.2d 652, 665 (5th Cir. 1972). "The solution of the 14th century circuit-riding judge was simply to load the jurors into oxcarts and carry them about with him until a verdict was 'bounced out.'" Note, Deadlocked Juries and Dynamite: A Critical Look at the "Allen Charge," 31 U. Chi. L. Rev. 386 (1964). Such jurors were "kept without

^{55/} Transcript, p. 349.

^{56/} Transcript, p. 351.

^{57/} Petitioner's Brief, p. 46.

52

meat, drink, fire, or candle, unless by permission of the judge, till they . . . all unanimously agreed." People v. Sheldon, 156 N.Y. 268, 50 N.E. 840, 842 (1898). Such measures have gone out of fashion in more recent years, although trial judges have threatened to deprive the jury of water and heat, in the dead of winter, while they continued to deliberate, Mead v. City of Richland Center, 237 Wis. 537 (1941), and have required the jurors to deliberate throughout the night, Commonwealth v. Moore, 398 Pa. 198 (1959).

A "more subtle technique, however, was soon found to be the giving of supplemental instructions, which exhorted the jury to arrive at a verdict." United States v. Bailey, supra, 468 F.2d at 665. Such instructions received early approval by the highest courts of Massachusetts, Commonwealth v. Tuley, 62 Mass. (8 Cush.) 1 (1851), and Connecticut, State v. Smith, 49 Conn. 376, 386 (1881).^{58/} In 1896 the United

^{58/}

"Although the verdict to which each juror agrees must, of course, be his own conclusion and not a mere acquiescence in the conclusions of his fellows, yet in order to bring twelve minds to a unanimous result, the jurors should examine with candor the questions submitted to them and with due regard and deference to the opinions of each other. In conferring together the jury ought to pay proper respect to each other's opinions, and listen with candor to each other's arguments. If much the larger number of the panel are for a conviction, a dissenting juror should consider whether the doubt in his own mind is a reasonable one which makes no impression upon the minds of so many men equally honest, equally intelligent with himself, who have heard the same evidence, with the same attention, and with equal desire

States Supreme Court, in Allen v. United States, 164 U.S. 492, 501-502 (1896), put its stamp of approval on supplemental instructions virtually identical to those upheld in Commonwealth v. Tuey and State v. Smith:

"These instructions were quite lengthy and were, in substance, that in a large proportion of cases absolute certainty could not be expected; that although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."

Id. at 501.^{59/}

58/ continued

to arrive at the truth, and under the sanction of the same oath. And on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves whether they may not reasonably, and ought not to, doubt the conclusions of a judgment which is not concurred in by most of those with whom they are associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellows."

49 Conn. at 386.

59/

A second paragraph from the Allen opinion, equally relevant with the main charge, is generally not given by modern trial judges:

The so-called "Allen charge" "was to become the well-spring from which all future judges would draw the solution to jury deadlocks." United States v. Bailey, supra, 468 F.2d at 665. The function of the Allen charge is obvious: it is intended to blast the jury out of the logjam in its deliberations, and has often been referred to as the "dynamite" charge. Though often criticized by appellate courts and commentators alike, the charge continues in widespread use "precisely because it works, because it can blast a verdict out of a jury otherwise unable to agree that a person is guilty." United States v. Bailey, supra, 468 F.2d at 666.

It is well-recognized that the central defect in the Allen charge is that it is unbalanced; i.e., it requires only the members of the minority on the jury, and not those of the majority, to re-examine their views. United States v. Fioravanti, 412 F.2d 407, 417 (3rd Cir.), cert. denied 396

59/ continued

"While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the juryroom.. The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury-room with a blind determination that the verdict shall represent his opinion of the case at that moment; or, that he should close his ears to the arguments of men who are equally honest and intelligent as himself."

42
- 49 -

U.S. 837 (1969); Note, Future Renditions of "Allen"-type Charges Must Conform to the Standard Approved by the American Bar Association, 9 Houston L. Rev. 570, 571 (1972). The jurors in the minority may reasonably believe that the charge is directed solely at them, and that the trial judge has revealed what he believes the "correct" verdict to be. Note, Due Process, Judicial Economy and the Hung Jury: A Reexamination of the Allen Charge, 53 Va. L. Rev. 123, 129 (1967); Note, On Instructing Deadlocked Juries, 78 Yale L.J. 100, 139 (1968); Note, Deadlocked Juries and Dynamite, supra, at 388.

The great danger of the Allen charge is that its imbalance will have a coercive effect upon the jurors in the minority, i.e., that it will impel them to accept the majority view in spite of their own conscientious convictions as to the defendant's guilt or innocence. Because of this danger, courts have often required the trial judge to mitigate the effect of the Allen charge by assuring the jurors "in some form that a juror was not expected, in deference to the other jurors, to abandon his conscientious convictions." United States v. Kenner, 354 F.2d 780, 781-782 (2d Cir. 1965), cert. denied 383 U.S. 958 (1966). Thus in United States v. Rao, 394 F.2d 354 (2d Cir.), cert. denied 393 U.S. 845 (1968), the Court of Appeals for the Second Circuit stated that "[t]he considerable costs in money and time to both sides if a retrial is necessary certainly justify an instruction to the jury that if it is possible for them to reach a unanimous verdict without any

56

juror yielding a conscientious conviction . . . they should do so." Id. at 355 (emphasis added). This has been the consistent position of our Court of Appeals. See United States v. Curcio, 279 F.2d 681 (2d Cir.), cert. denied 354 U.S. 824 (1960); United States v. Thomas, 282 F.2d 191 (2d Cir. 1960); United States v. Tolub, 309 F.2d 286 (2d Cir. 1962); United States v. Kanaher, 317 F.2d 459, 483-484 (2d Cir.), cert. denied Corallo v. United States, 375 U.S. 835 (1963); United States v. Kenner, supra, 354 F.2d at 782-783; United States v. Bilotti, 380 F.2d 649, 654 (2d Cir.) cert. denied 389 U.S. 944 (1967); United States v. Meyers, 410 F.2d 693, 697 (2d Cir.), cert. denied 396 U.S. 835 (1969); United States v. Barash, 412 F.2d 26, 31-32 (2d Cir.) cert. denied 396 U.S. 832 (1969); United States v. Hynes, 424 F.2d 754, 757 (2d Cir.) cert. denied 399 U.S. 933 (1970); United States v. Bowles, 428 F.2d 592, 595 (2d Cir.), cert. denied 400 U.S. 928 (1970); United States v. Cassino, 467 F.2d 610, 619 (2d Cir. 1972), cert. denied 410 U.S. 928 (1973); United States v. Jennings, 471 F.2d 1310, 1313-1314 (2d Cir.), cert. denied 411 U.S. 935 (1973). Moreover, several courts have sanctioned the Allen charge only when the instruction given by the trial judge does not deviate from the language of the Allen opinion. A few courts have refused to allow use of the Allen charge at all, and the American Bar Association has recommended that it be replaced.^{60/} The state of the law is summarized in United

^{60/}

American Bar Association, Standards Relating to Trial by Jury 145-46 (1968):

States v. Bailey, supra, 468 F.2d at 667-668, in which the Court of Appeals for the Fifth Circuit sustained an Allen charge with deep regret and only on the ground that other panels of the court had refused to abandon the instruction:

"(1) The District of Columbia Circuit has exercised its supervisory jurisdiction to abolish Allen and has replaced it with the ABA standard. See United States v. Thomas, 1971, 146 U.S.App.D.C. 101, 449 F.2d 1177, 1187 (en banc).

(2) The First Circuit has said that the dynamite charge 'should be used with great caution, and only when absolutely necessary.'

60/ continued

"§ 5.4 Length of Deliberations; deadlocked jury.

"(a) Before the jury retires for deliberation, the court may give an instruction which informs the jury:

(i) that in order to return a verdict, each juror must agree thereto;

(ii) that jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;

(iii) that each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;

(iv) that in the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous;

and
(v) that no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

"(b) If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give or repeat an instruction as provided in subsection (a). The court shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

"(c) The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement."

59

United States v. Flannery, 1 Cir. 1971, 451 F.2d 880, 883. Although it did not require trial courts to employ the ABA standard, the First Circuit effectively ordered that if Allen charges are to be used, the Allen language must be precisely followed.

(3) The Second Circuit has such 'grave doubts' about Allen that it has given notice that it will not tolerate the slightest deviation from the approved language; furthermore, the Court stated that it permitted Allen to stand only by 'the barest margin.' See United States v. Kenner, 2 Cir. 1965, 354 F.2d 780, 782-784.

(4) The Third Circuit has flatly abolished the dynamite charge. 'Hereafter this court will not let a verdict stand which may have been influenced in any way by an Allen Charge.' United States v. Fioravanti, 3 Cir. 1969, 412 F.2d 407, 420.

(5) The Fourth Circuit has for a decade refused to allow trial judges to depart in the least from the language of the Allen case itself. See United States v. Rogers, 4 Cir. 1961, 239 F.2d 433.

(6) The Sixth Circuit has reversed convictions where only the slightest addition to the original Allen charge was made. See, e.g., United States v. Harris, 6 Cir. 1968, 391 F.2d 348, 355.

(7) The Seventh Circuit has abolished the Allen charge in favor of the ABA recommendation. United States v. Brown, 7 Cir. 1969, 411 F.2d 930; Brandom v. United States, 7 Cir. 1970, 431 F.2d 1391.

(8) The Eighth Circuit allows only the unadulterated recitation of the Supreme Court's paraphrase of the trial court's charge in Allen, and even reading the Supreme Court's 'second paragraph' to the jury is prohibited. See Chicago & E. I. Ry. v. Sellars, 8 Cir. 1925, 5 F.2d 31.

(9) The Ninth Circuit allows a supplemental instruction that does not urge the minority to rethink their position, does not tell the jury

they must reach a verdict, but that simply tells the jury to keep trying. See Walsh v. United States, 9 Cir. 1967, 371 F.2d 135.

(10) The Tenth Circuit 'cautiously' approves Allen, but it finds reversible error when any departures are made from the approved instruction's language. Compare Burroughs v. United States, 10 Cir. 1966, 365 F.2d 431, with Thompson v. Allen, 10 Cir. 1956, 240 F.2d 266. See also Goff v. United States, 10 Cir. 1971, 446 F.2d 623.

States too have joined the abandonment of Allen. Arizona has abolished Allen in its entirety. State v. Thomas, 86 Ariz. 161, 342 P.2d 197 (1959). Montana has put Allen to rest. State v. Randall, 137 Mont. 534, 353 P.2d 1054 (1960). Kansas, Idaho, and Iowa disapprove of and discourage any use of the dynamite charge. See, e.g., Eikmeier v. Bennett, 143 Kan. 888, 57 P.2d 87, 92 (1936); State v. Moon, 20 Idaho 202, 117 P. 757 (1911); and Middle States Util. Co. v. Incorporated Tel. Co., 222 Iowa 1275, 271 N.W. 180 (1937). Missouri allows only a 'temperate and moderate' supplemental instruction. See State v. Bozarth, 361 S. W.2d 819, 826 (Mo.Sup.1962)." (Footnote omitted).

Finally, a trial judge is absolutely forbidden to tell a jury that it must reach a verdict. In Jenkins v. United States, 380 U.S. 445 (1965), the trial judge had advised a deadlocked jury, "You have got to reach a decision in this case." The Supreme Court found that the judge's instruction was coercive and therefore reversed the defendant's conviction in a per curiam decision in which it quoted from the brief of the Solicitor General:

Of course, if this Court should conclude that the judge's statement had the coercive effect attributed to it, the judgment should be reversed and the cause remanded for a new trial; the principle that jurors may not be coerced into surrendering views conscientiously held is so clear as to require no elaboration.

380 U.S. at 446. Cf. Brasfield v. United States, 272 U.S.

448, 450 (1926); United States v. Dunkel, 173 F.2d 505 (2d Cir. 1949). See Note, On Instructing Deadlocked Juries, supra, at 136.

In the instant case, the trial judge's supplemental instructions compounded manipulation with misdirection, all to the undoubted prejudice of the defendant. The trial judge's statement in his first supplemental instruction, "I cannot allow you to leave before I have some sort of verdict," can only be seen as the kind of command to the jury so summarily condemned by the Supreme Court in Jenkins. The pronouncement that a declaration of a mistrial was inconceivable, that it "would be an impossibility," was a clearly erroneous statement of the law.

The trial judge gave his second supplemental instruction without having received any communication from the jury that it was unable to agree. The language of the instruction was not the language of the Allen charge. The instruction, in effect, paid lip service to the proposition that each juror should follow his own convictions, in the only portion of the instruction which tracked the language of State v. Smith, then laid strong emphasis on the desirability of jurors re-examining their own views in light of the conclusions reached by the others. Although the instruction did not in terms urge those jurors in the minority to give careful consideration to the views of the majority, that point was undoubtedly clear from the circumstances and the context of the judge's admonition. The directive to "Follow that theory, that you will resolve

conclude that if the defendant did not have a record of prior arrests, there would be no reason to cover the reverse side of the fingerprint card with white paper.

- 55 -

yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same evidence" (emphasis added), was unquestionably an injunction to the jurors in the minority to "follow," as a matter of "duty," the conclusions of the majority, whatever they might be. The trial judge gave no mitigating instruction assuring the jurors in the minority that they were not to yield their conscientious convictions: indeed, the thrust of the total instruction was that the jurors in the minority should yield their own views in favor of those of the majority. The impact of the judge's earlier promise to keep the jurors there until they reached a verdict could not have been lost on the recalcitrant members of the jury. The supplemental instructions in the instant case were no "dynamite charge," designed to blast the jury off dead center: they were more like a nuclear detonation, annihilating the dissenters completely. These instructions, erroneous in their substance and coercive in their effect, denied the petitioner a fair trial and therefore deprived him of a right guaranteed by the Constitution. See pp. 41-43 supra. As our Court of Appeals stated more than forty years ago in a case raising similar issues:

"The cases all recognize that the surrender of the independent judgment of a jury may not be had by command or coercion. It is not enough to cure the error to conventionally say that it is the function of the jury to decide questions of fact. Pressure of whatever character, whether acting on the fears or hopes of the jury, if so exerted as to overbear their volition without convincing their judgment, is a species of restraint under which no valid judgment can be made to support a conviction. No force should be used

- 56 -

or threatened, and carried to such a degree that the juror's discretion and judgment is overborne, resulting in either undue influence, or coercion. A judge may advise, and he may persuade, but he may not command, unduly influence, or coerce. The supplementary instructions were effective, but a breach of the right of the plaintiffs in error to an impartial charge, free from animated argument and coercive entreaties. What occurred deprived the plaintiffs in error of that fair and impartial trial the law accords to them, no matter how convincing their guilt may appear."

Wissel v. United States, 22 F.2d 468, 471 (2d Cir. 1927).

Cf. Tumey v. Ohio, 273 U.S. 510, 532 (1927) ("Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."). Even if the two circumstances discussed herein--i.e., the presentation to the jury of highly prejudicial information regarding petitioner's prior arrest record, and the coercive supplementary instruction by the trial judge--were not, when viewed separately, thought to deprive the petitioner of that fair trial which is guaranteed by the Constitution, the combination of the prejudicial evidence and the coercive instruction, which in effect shattered the presumption of innocence and then forced the jury to a verdict, clearly violated petitioner's right to due process of law.

IT IS ORDERED that a writ of habeas corpus should issue out of this court discharging the petitioner from

custody unless the petitioner, John Wesley Ralls, is afforded a new trial within sixty days.

This Court commends appointed counsel for the petitioner for their diligent and resourceful efforts in his behalf.

Dated at Hartford, Connecticut, this day of May,
1974.

M. Joseph Blumenfeld
United States District Judge

STATE OF CONNECTICUT
NEW HAVEN COUNTY
SUPERIOR COURT

HAROLD J. IVEY

Edward Horwitz, clerk of the Superior Court within and for New Haven County, in the State of

Connecticut, and keeper of the records and seal thereof, hereby certify that the above and foregoing is a true copy of the complete docket entries, all as on file in the records of this Court in the case of 16334 State of Connecticut vs. John Ralls, also known as John Rawls.

In testimony whereof I hereunto set my hand and affix the
seal of said court, at New Haven, in said county, this
23rd day of January, 1974.

Harold J. Ivey Clerk.

JD 3104-CSP

State
vs.
John Ralls, aka
John Ralls

Docket No. 163374
XXXXXX Mar. 10, 1970

Jdgt. For

Withdrawn

Discont'd.

(Anthony E. Mayo)

John W. Williams
S.D.
10/25/71

DOCKET ENTRIES

NO. DATE

Murder, first degree

6-15-70 Murder 1st degree Indictment True Bill

6-30-70 Not Guilty

11-11-70 Finding of Guilty by Jury of Murder and Rape at 9:15 PM

12-16-70 State Prison for the term of Life Imprisonment.

George, J.

STIP. PET. EX. #2

NO. DATE

1 6-11-70

APPEARANCES OF	PUBLIC
ANTHONY J. D'AMICO	DEFENDERS
FRANCIS	FOR
FOR	DEFENDANTS
FILED	

2 6-15-70 "True Bill" returned Master.

3 7-17-70 Bill Request to Judge filed

4 7-17-70 Status Request to Judge filed

7-17-70 Criminal Motion to Dismiss made and denied by George T

Vicariance Investigation and report ordered on

Defendant _____ on _____

19____ by _____ by the Court
 Ordered _____ that pre sentence probation report not to be
 released to the public without the order of
 the Court or a Judge thereof.

Presentence report of C. J. _____ filed, as and
 counsel notified _____ 19____

Written notice of right to apply for review
 of sentence and appearance for review of
 sentence given _____ to defendant.

State Police, State Prison, Probation Dept., Dept. of
 Motor Vehicles _____ of receipt notified of

Sentence _____ 19____
 Defendant _____ 12-11-70 is willing
 of right of _____ person
 to apply for _____ of the person
 and for a _____ of record to prosecute
 appeal without expense

5 12-9-70

12-11-70

12-11-70

STIP. PET. EX. # 2(a)

66-A

55

State
to
Rush

Docket No. 16334

1st Tues. 16334

Jdgt. For

Withdrawn

Discont'd.

DOCKET ENTRIES

NO.	DATE	
6	12-20-71	Application of Waiver of Fees & costs of Appeal Filed.
	12-11-71	Granted by George J. ...
7	12-20-71	Application of Waiver of Fees & costs of Appeal Filed.
8	12-20-71	Motion for extension of time to file ... filed ... and counsel notified.
9	7-8-71	Motion for extension of time to file ... filed ... and counsel notified.
10	7-28-71	Transcript Filed.
11	8-14-71	Request for Findings & Conclusions Filed.
12	8-20-71	Request for Findings & Conclusions Filed.
13	8-27-71	Motion for extension of time to file ... filed ... and counsel notified.
14	10-15-71	Motion for extension of time to file ... filed ... and counsel notified.

Granted 1-22-72 by Public Defender J. ... and time extended to 30 days after transcript filed and counsel notified.

Granted 7-23-71 by George J. ... and time extended to 8-23-71; counsel notified.

Granted 9-15-71 by George J. ... and time extended to 10-15-71; counsel notified.

Granted 11-2-71 by George J. ... and time extended to 12-15-71; counsel notified.

10-9-71 Local Motion of R. H. DeMay to W. H. Jones Rogers
 Granted by his Motion of
 10-15-71 John W. Williams against S. P. H. by his Motion
 Appearance of John R. Williams
 For John R. Williams
 Filed & Counsel notified
 Motion for extension to file Answered Draft Finding filed
 Granted by George J.
 12-14-71
 Motion for extension of time to file
 Counter-Finding filed
 12-14-71
 Motion for extension of time to file
 Answered Draft Finding filed
 and counsel notified
 12-15-71
 1-3-72 Directed for Finding etc filed,
 Motion for extension of time to file
 Counter-Finding filed and time for filing same extended to
 3/14/72 counsel notified
 2-10-72 Motion for extension of time to file
 Counter-Finding filed
 and counsel notified
 3-23-72
 Motion for extension of time to file
 Counter-Finding filed
 and counsel notified
 3-23-72
 Motion for extension of time to file
 Counter-Finding filed
 and counsel notified
 5-2-72
 Motion for extension of time to file
 Counter-Finding filed
 and counsel notified
 5-10-72
 and time for filing same extended to
 June 1, 1972 counsel notified

Docket No.

1st Tues.

Jdgt. For

Withdrawn

Discont'd.

16332

FC 11/12

DOCKET ENTRIES

NO. DATE

24 5-31-72

Motion for extension of time to file
Counter Filing and counsel notified.

Granted 6-8-72 by Judge
and time was extended to
July 31 1972, counsel notified.

25 7-31-72

Motion for extension of time to file
Counter Filing and counsel notified.

Granted 8-14-72 by Judge
and time was extended to
9-11-72, counsel notified.

26 9-11-72

Motion for extension of time to file
Counter Filing and counsel notified.

Granted by Judge
and time was extended to
counsel notified.

27 9-12-72

Motion for extension of time to file
Counter Filing and counsel notified.

Granted 9-20-72 by Judge
and time for filing same extended to
11-13-72, counsel notified.
Copy of bill tendered by 11/13/72

28 11-14-72

Motion for extension of time to file
Counter Filing and counsel notified.

Appearance of Counsel
For and time was extended to
Filed & Counsel notified.

29 12-14-72

Motion for extension of time to file
Counter Filing and counsel notified.

Granted 12-29-72 by Judge
and time was extended to
March 1973, counsel notified.
SIT 5 (1)

69

30 1-5-73 Counter Finding file
 31 3-12-73 Finding filed
 32 3-12-73 motion to correct finding

33 3-14-73 Assignment of Errors Filed By STATE

34 5/2/73 Finding REFILED

5-10-73 Motion for extension of time to file
 Resigned of 5-10-73 filed
5-10-73 and counsel notified
 Granted 5-21-73 by Shanley
 and time, fees, mileage, costs extended to
5-21-73; counsel notified

36 5/29/73 Assignment of Errors FILED

6-5/73 Correction of Paragraph 13 - Ernest Nathan

37 7-10-73 Motion to Reduce Appeal Bond

38 7/24/73 motion to SET APPEAL BOND FILED

9-6-73 Appeal Bond set at \$5,000.00 by Shanley

11-2-73 Motion for Permission to file Typewritten Brief Filed

12-4-73 Allowed by Supreme Court Howell CD

11-3-73 Shanley's time re 39 Filed

12/10/73 Motion for extension of time to file
Shanley's brief filed
Shanley's brief and counsel notified.
 Granted 12-16-73 by J.
 and time for filing same extended to

42 SEE FILE Enter by Ernest Nathan

43 REQUEST FOR FINDING Entered by Ernest Nathan

STIP, PET. EX. #2(c)

59

TABLE I AND APPENDICES A AND B
TO
PETITIONER'S BRIEF,
RALLS vs. MANSON, et. al.
CIVIL NO.

71

TABLE IV

TABLE I

LENGTH OF TIME BETWEEN NOTICE OF APPEAL AND FINAL
DECISION BY CONNECTICUT SUPREME COURT
(CRIMINAL CASES)
(NOVEMBER 1970 - JANUARY 1, 1974)

<u>NAME OF CASE</u>	<u>DATE OF NOTICE OF APPEAL</u>	<u>DATE OF FINAL DECISION</u>	<u>LENGTH OF TIME (MOS.)</u>
FE vs:			
1. Blyden	5/2/71	12/18/73	32
2. Sulman	5/15/70	12/18/73	43
3. Bzdyra	10/12/72	11/20/73	13
4. Peay	9/13/71	11/13/73	26
5. Palozie	11/4/70	7/24/73	33
6. Romano	2/9/71	7/10/73	29
7. Chrisholm	4/23/71	6/26/73	26
8. Delmonaco	12/1/70 ¹	6/26/73	31+
9. Evans	10/8/70	6/19/73	32
10. Uriano	3/26/71	5/8/73	27
11. Villafane	6/30/72	5/1/73	10 ²
12. Bealieu	4/19/71	5/1/73	24
13. Brathwaite	4/8/71	4/24/73	25
14. Moynahan	3/19/70	4/24/73	37
15. Atkinson	4/17/70	4/3/73	36
16. Gobbs	1/6/69	4/3/73	51
17. Baker	3/26/71	2/13/73	23
18. Clark	8/26/70	1/16/73	29
19. Guthridge	11/6/70	12/26/72	26
20. Cofone	6/15/70	12/19/72	30
21. Kearney	12/29/67	12/12/72	59
22. Dubina	10/10/69	12/5/72	38
23. Ferraro	3/25/70	12/5/72	32
24. Pascucci	4/16/70	12/5/72	32
25. Keeler	9/4/70	11/7/72	26
26. Edwards	3/23/70	8/22/72	29
27. Mayell	2/3/70	8/1/72	30
28. Hines	7/7/69	7/25/72	37
29. Vega	12/22/69	7/4/72	30
30. LaSelva	2/19/71	6/27/72	16 ³
31. Lombardo	11/13/70	6/20/72	19
32. Cari	12/23/68	6/13/72	42
33. Krause	2/16/70	5/23/72	27
34. Brown	12/1/70	5/16/72	19
35. Grayton	6/5/70	5/9/72	23

TABLE I CONT.

NAME OF CASE	DATE OF NOTICE OF APPEAL	DATE OF FINAL DECISION	LENGTH OF TIME (MOS.)
36. Chilsolm	12/8/70	4/25/72	17 ⁴
37. Hawkins	3/31/70	3/21/72	24
38. Jackson	9/9/70	3/21/72	18 ⁵
39. Bausman	3/27/69	2/15/72	35
40. Johnson	4/29/69	1/25/72	33
41. Manning	9/27/68	1/11/72	40
42. Pearson	10/21/70	1/4/72	26
43. Bitting	4/10/70	12/21/71	20
44. Delgado	12/20/67	12/7/71	48
45. Husser	4/7/70	10/27/71	19
46. Parker	1/15/69	8/31/71	32
47. Savage	5/20/69	7/27/71	26
48. Darwin	2/13/69	7/20/72	29
49. Oliver	5/22/69	7/20/71	26
50. Cobuzzi	2/23/68	7/13/71	41
51. Pascucci	4/10/70	7/13/71	15 ⁶
52. Briggs	10/30/69	7/8/71	19
53. Greene	7/3/68	7/8/71	35
54. Brown	3/14/69	7/1/71	27
55. Raffone	5/12/67	4/20/71	47
56. Farrah	1/1/69	3/30/71	26
57. Tupko	11/28/69	3/24/71	16 ⁷
58. Lemieux	5/23/69	3/17/71	22
59. Mortoro	10/3/68	2/3/71	29
60. Brown	7/25/69	1/26/71	18 ⁸
61. Gelinas	11/5/67	1/26/71	40
62. Shelton	2/27/69	1/26/71	23
63. VanValkenberg	6/14/68	12/15/70	30
64. Holmes	6/27/69	12/8/70	17
65. Duffen	12/3/68	11/23/70	24
66. Oliver	12/30/68	11/23/70	23
67. Marquez	1/16/68	11/10/70	34
68. Orlando	7/31/68	11/10/70	27
69. Costello	8/24/67	11/4/70	38
70. Kelsey	8/7/69	11/4/70	20 ⁹

¹ Date of notice of appeal unknown. Date shown indicates date of defendant's request for findings.

² Appeal by State (of Dismissal of entire jury panel).

³ Appeal by State; No request for findings, draft findings, and findings required.

⁴ Appeal of jury's verdict only, no request for findings, draft findings, and findings required.

⁵ Appeal by State; No request for findings, draft findings, and findings required.

⁶ Motion to set appeal; No request for findings, draft findings, and findings required.

⁷ Appeal involved right to withdraw guilty plea.

⁸ Direct appeal resulting from advice to defendant in state habeas corpus appeal of same issue.

⁹

61

A-4

APPENDIX A TO TABLE I: CASES ARGUED AND OR DECIDED — 1974 *

NAME OF CASE	DATE OF NOTICE OF APPEAL	DATE OF FINAL DECISION (D) OR ARGUMENT (A)	LENGTH OF TIME (MOS.)
STATE vs:			
1. Smith	11/20/72	1/22/74(D)	14
2. Watson	6/6/71 ¹	1/15/74(D)	31+
3. L'Heureux	3/9/72	1/3/74 (A)	22+
4. Clements	4/28/72	1/2/74 (A)	20+
5. Barbato	6/8/72	1/1/74 (D)	19
6. Clemente	12/12/69	12/11/73 (A)	36+
7. Croom	12/1/72	12/7/73 (A)	12+
8. Sober	2/8/71	12/7/73 (A)	34+
9. Mullens	12/1/70	12/4/73 (A)	36+
10. Tully	6/17/71	12/4/73 (A)	30+

* NOTE: No Statistics Available for Unargued Pending Appeals.
1. See N-1 of Table I

74

exerted as to overbear their will without convincing their judgment, is a species of restraint under which no valid judgment can be made to support a conviction. No force should be used

A-5

APPENDIX B TO TABLE I: SUMMARY

<u>LENGTH OF TIME (MOS.)</u>	<u>NUMBER OF CASES 1974</u>	<u>NUMBER OF CASES 1973</u>	<u>NUMBER OF CASES 1972</u>	<u>NUMBER OF CASES 1970-1</u>	<u>TOT</u>
UNDER 18 MONTHS	2	2 ¹	2 ²	3 ³	7
18 - 30 MONTHS	3	8	13	17	38
31 - 40 MONTHS	5	6	7	5	18
41 - 50 MONTHS		1	1	3	5
OVER 50 MONTHS		1	1	0	2
		<u>18</u>	<u>24</u>	<u>28</u>	<u>70</u>

1. ONE WAS AN APPEAL BY THE STATE
2. SPECIAL APPEALS NOT REQUIRING REQUEST FOR FINDINGS, DRAFT FINDINGS AND FINDINGS
3. SPECIAL APPEALS, SEE NS 6 & 7, SUPRA, OF TABLE I

TABLE II AND APPENDIX A

TO

PETITIONER'S BRIEF,

RALLS vs. MANSON, et. al.

CIVIL NO.

TABLE II

MATERIAL CHRONOLOGY REGARDING CONNECTICUT
CRIMINAL APPEALS
DECIDED SINCE NOVEMBER, 1970

NAME OF CASE	DATE OF CONVICTION	DATE OF NOTICE OF APPEAL	DATE OF REQUEST FOR DRAFT FINDINGS ¹	DATE OF FINDINGS	DATE OF ASSIGNMENT OF ERRORS	DATE OF DECISION ²
1. Blyden	2/23/71	5/2/71	7/8/71	10/1/71	11/19/71	12/18/73
2. Sulman	2/25/70	5/15/70	10/15/70	4/10/72	5/16/72	12/18/73
3. Bzdyra	9/4/72	10/12/72	12/4/72	12/29/72	1/24/73	11/20/73
4. Peay	6/15/71	9/13/71	12/16/71	5/22/72	8/14/72	11/13/73
5. Palozie	3	11/4/70	12/29/71	3/24/72	4/19/72	7/24/73
6. Romano	1/20/71	2/9/71	10/11/71	1/27/72	9/14/72	7/10/73
7. Chisholm		4/23/71	6/8/71	1/12/72		6/26/73
8. Delmonaco			12/1/70	1/19/72	12/25/72	6/26/73
9. Evans	9/17/70	10/8/70	6/15/71	2/24/72	3/1/72	6/19/73
10. Uriano		3/26/71	4/30/71	11/30/71	5/15/72	6/19/73
11. Villafane		6/30/72	7/24/72	9/12/72	9/14/72	5/8/73
12. Bealieu	3/19/71	4/19/71	10/29/71	1/10/72	2/9/72	5/1/73
13. Brathwaite	1/14/71	4/8/71	11/9/71	1/3/72	3/7/72	5/1/73
14. Moynahan	2/3/70	3/19/70	2/10/71	8/10/71	8/20/71	4/24/73
15. Atkinson	2/4/70	4/17/70	5/3/71	11/5/71	12/29/71	4/3/73
16. Cobbs	4/29/68	1/6/69	1/6/69	8/12/70	12/1/70	4/3/73
17. Baker	2/25/71	3/26/71	3/26/71	10/27/71	1/7/72	2/13/73
18. Clark	5/28/70	8/26/70	4/28/71	8/30/71	9/13/71	1/16/73
19. Guthridge	10/8/70	11/6/70	1/29/71	8/31/71	9/9/71	12/26/72
20. Cofone	6/3/70	6/15/70	4/21/71	8/25/71	10/8/71	12/19/72
21. Kearney	11/22/67	12/29/67	12/26/68	11/22/69	12/3/69	12/12/72
22. Dubina	6/10/69	10/10/69	4/16/71	6/8/71	8/20/71	12/5/72
23. Ferraro	3/5/70	3/25/70	8/28/71	6/30/71	8/20/71	12/5/72
24. Pascucci	11/21/69	4/16/70	5/19/70	10/27/70	2/18/71	12/5/72
25. Keeler	7/31/70	9/4/70	1/15/71	7/28/71	8/12/71	11/7/72
26. Edwards		3/23/70	12/15/70	5/27/71		8/27/72
27. Mayell	1/27/70	2/3/70	11/30/70	5/28/71	6/10/71	8/1/72
28. Hines	6/19/69	7/10/69	3/6/70	1/20/70	3/5/71	8/1/72
29. Vega	11/13/69	12/22/69	5/29/70	5/17/71	9/10/71	7/4/72
30. LaSelva		2/19/71			7/29/71	6/27/72
31. Lombardo	9/10/70	11/13/70	12/30/70	4/13/71	4/19/71	6/20/72
32. Cari	12/6/68	12/23/68	9/18/69	12/10/70	12/18/70	6/13/72
33. Krause	10/30/69	2/16/70	9/10/70	11/23/70	12/14/70	5/23/72
34. Brown	8/20/70	12/1/70	2/17/71	3/1/71	3/18/71	5/16/72
35. Grayton	3/12/70	6/5/70	7/6/71	8/16/71	8/19/71	5/11/72

TABLE II CONT.

NAME OF CASE	DATE OF CONVICTION	DATE OF NOTICE OF APPEAL	DATE OF REQUEST FOR DRAFT FINDINGS	DATE OF FINDINGS	DATE OF ASSIGNMENT OF ERRORS	DATE OF DECISION
Chilsolm	11/9/70	12/8/70			3/3/71	4/25/72
Hawkins		3/31/70	3/31/70		10/1/70	3/22/72
Jackson	8/19/70	9/9/70			9/9/70	3/22/72
Bausman	3/13/69	3/27/69	8/8/69	1/28/70	3/4/70	2/15/72
Johnson	3/20/69	4/29/69	9/2/69	5/8/70	5/15/70	1/25/72
	9/12/68	9/29/68	7/17/69	2/2/70	4/27/70	1/11/72
Pearson	6/10/69	10/21/70			10/21/70	1/4/72
Bitting	2/9/70	4/10/70	4/10/70	7/9/70	7/16/70	12/21/71
Delgado	12/6/67	12/20/67	3/29/68	2/17/69	4/1/69	12/7/71
Husser		4/7/70	7/14/70	9/15/70	10/22/70	10/27/71
Parker	9/12/68	1/15/69	5/15/69	3/4/70	3/13/70	8/31/71
Savage	4/18/69	5/20/69	9/15/69	1/16/70	1/28/70	7/27/71
Darwin	1/15/69	2/13/69	5/29/69	10/15/69	11/25/69	7/20/71
Oliver	4/18/69	5/22/69	10/15/69	1/13/70	3/30/70	7/20/71
Cobuzzi		2/23/68	12/1/69	1/8/70	1/20/70	6/8/71
Pascucci	6/19/69	4/10/70			4/10/70	7/13/71
Briggs	11/26/68	10/30/69	10/30/69	7/9/70	8/20/70	6/8/71
Greene	5/9/68	7/3/68	12/1/69	1/8/70	1/20/70	6/8/71
Brown	11/8/67	3/14/69			6/15/70	6/1/71
Raffone	4/27/67	5/12/67	10/9/67	4/19/68	10/30/68	4/20/71
Farrah	12/17/68	1/31/69	3/31/69		12/29/69	3/30/71
Tupko	3/12/69	11/28/69	11/28/69	5/6/70	6/11/70	3/24/71
Lemieux	4/15/69	5/23/69	8/15/69	1/27/70	3/30/70	3/17/71
Mortoro	7/2/68	9/3/68	12/16/68	10/1/69	11/13/69	2/3/71
Brown	9/29/61	7/25/69	7/25/69	7/25/69	12/2/69	1/26/71
Gelinas	9/6/67	10/5/67	12/15/67	1/23/68	3/4/68	1/26/71
Shelton	1/30/69	2/27/69	6/30/69	4/3/70	4/10/70	1/26/71
VanValkenberg	5/24/68	6/14/68	3/17/69	12/11/69	12/18/69	12/15/70
Holmes	1/29/69	6/27/69	6/27/69	10/27/69	11/17/69	12/8/70
Duffen		10/3/68	9/8/69	10/27/69	11/12/69	11/23/70
Oliver	4/11/68	12/30/68	12/30/68	9/15/69	9/24/69	11/23/70
Marquez	12/20/57	1/16/68	11/1/68	4/23/69	6/25/69	11/10/70
Orlando	7/23/68	7/31/68	4/11/69	9/25/69	9/3/69	11/10/70
Costello	6/8/66	8/24/67	3/22/68	6/17/68	3/19/70	11/4/70
Kelsey	10/17/68	3/7/69			3/7/69	11/4/70

¹Dates of submission of counterfindings are not submitted, as unavailable.

²Dates of submission of Briefs are not submitted, as Connecticut Briefs are not dated.

³Empty spaces contained within this Table reflect an absence of official data.

APPENDIX A TO TABLE II
CASES ARGUED OR DECIDED IN 1974

<u>NAME OF CASE</u>	<u>DATE OF CONVICTION</u>	<u>DATE OF NOTICE OF APPEAL</u>	<u>DATE OF REQUEST FOR DRAFT FINDINGS</u>	<u>DATE OF FINDINGS</u>	<u>DATE OF ASSIGNMENT OF ERRORS</u>	<u>DATE OF DECISION</u>
1. Smith	2/2/72	11/22/72	2/8/73	4/10/72	4/18/73	1/22/74 D
2. Watson	12/8/70		6/14/71	5/2/72	5/26/72	1/15/74 D
3. 'Heureux	3/25/71	3/9/72	3/9/72	9/25/72	11/5/72	1/3/74 A
4. Clements	12/16/71	4/28/72	10/25/72	12/21/72	1/2/73	1/2/74 A
5. Barbato	5/4/72	6/8/72	11/30/72	1/4/73	1/19/73	1/1/74 D
6. Clemente	11/21/69	12/12/69	10/19/70	8/28/72	9/6/72	12/11/73 A
7. Croom	12/1/71	12/1/72	8/17/72	9/26/72	11/20/72	12/7/73 A
8. Sober	12/17/70	12/8/71	11/4/71	2/3/72	2/22/72	12/7/73 A
9. Mullens	5/21/70	12/1/70	7/29/71	6/5/72	6/15/72	12/4/73 A
10. Tully		6/17/71	12/15/71	4/10/72	5/15/72	12/4/73 A

TABLE III AND
APPENDIX A TO
PETITIONER'S BRIEF

TABLE III

OFFICIAL CITATIONS FOR MATERIAL
SUBMITTED IN PREVIOUS
TABLES

1. Blyden	*		XXXV	25	CLJ	1
2. Sulman	*		"	25	"	18
2. Bzdyra	*		"	21	"	5
4. Peay	*		"	20	"	3
5. Palozie	*		"	4	"	9
6. Romano	*		"	2	"	7
7. Chisholm	*		XXXIV	52	"	18
8. Delmonaco	*		"	52	"	16
9. Evans		Vol. A-547, Position 10,	XXXV	29	"	1
10. Uriano	*		XXXIV	51	"	12
11. Villafane		Vol. A-546, P. 385;	"	46	"	4
12. Bealieu	"	547, Position 8,	"	44	"	1
13. Brathwaite	"	" Position 9,		162	Conn.	650
14. Moynahan	"	545, Pt. 2, P. 1;	XXXIV	43	CLJ	1
15. Atkinson	"	547 Position 7,	"	40	"	9
16. Cobbs	"	543 P. 337,	"	40	"	1
17. Baker	"	" P. 200,	"	33	"	15
18. Clark	"	" P. 224,	"	29	"	9
19. Guthridge	"	540, Pt. 2, P. 208,	"	26	"	1
20. Cofone	"	542, Pt. 2, P. 256,	"	25	"	1
21. Kearney	"	540, Pt. 2, P. 285,	"	24	"	11
22. Dubina	"	" Pt. 2, P. 89,	"	23	"	8
23. Ferraro	"	" Pt. 2, P. 138,	"	23	"	13
24. Pascucci	"	" Pt. 2, P. 539,	"	23	"	18
25. Keeler	"	" Pt. 2, P. 379,	"	23	"	2
26. Edwards	"	538, Pt. 3, P. 171,	"	8	"	9
27. Mayell	"	" Pt. 3, P. 246,		163	Conn.	419
28. Hines	"	" Pt. 3, P. 213,	XXXIV	4	CLJ	16
29. Vega	"	" Pt. 3, P. 292,		163	Conn.	304
30. LaSelva	"	533, Pt. 2, P. 214,		163	"	174
31. Lombardo	"	534, P. 495,		163	"	241
32. Cari	"	533, Pt. 2, P. 214,		163	"	174
33. Krause	"	531, P. 489,		163	"	76
34. Brown	"	" P. 410,		163	"	52
35. Grayton	"	533, Pt. 2, P. 214,		163	"	104
36. Chilsolm	*			162	"	631
37. Hawkins	"	529, Pt. 2, P. 164,		162	"	514
38. Jackson	"	525, Pt. 2, P. 331,		162	"	440
39. Bausman	"	" Pt. 2, P. 175,		162	"	308
40. Johnson	"	529, Pt. 2, P. 179,		162	"	215

TABLE III CONTINUED

41. Manning	Vol A-	525	Pt. 2, P. 354,	162	Conn.	112
42. Pearson	"	529	Pt. 2, P. 245,	"	"	614
43. Bitting	"	525	Pt. 2, P. 215,	"	"	1
44. Delgado	"	523	Pt. 2, P. 94,	161	"	536
45. Husser	"	525	Pt. 2, P. 313,	"	"	513
46. Parker	"	523	Pt. 2, P. 436,	"	"	500
47. Savage	"	"	Pt. 2, P. 490,	"	"	445
48. Darwin	"	"	Pt. 2, P. 1,	"	"	413
49. Oliver	"	520	P. 311,	"	"	348
50. Cobuzzi	"	521	P. 220,	"	"	371
51. Pascucci	"	523	P. 479,	"	"	382
52. Briggs	"	521	P. 137	"	"	283
53. Greene	"	"	P. 252,	"	"	291
54. Brown	"	"	P. 199,	"	"	219
55. Raffone	"	516	Pt. 1, P. 520,	160	"	
56. Farrah	"	"	Pt. 1, P. 461,	161	"	43
57. Tupko	"	"	Pt. 1, P. 634,	"	"	20
58. Lemieux	"	"	Pt. 1, P. 493,	160	"	519
59. Mortoro	"	514	P. 237,	"	"	378
60. Brown	"	513	Pt. 2,	"	"	346
61. Gelinas	"	514	P. 186,	"	"	306
62. Shelton	"	"	P. 280,	"	"	360
63. VanValkenberg	"	512	Pt. 2, P. 303,	"	"	171
64. Holmes	"	510	Pt. 2, P. 216,	"	"	140
65. Duffen	"	"	Pt. 2, P. 194	"	"	77
66. Oliver	"	"	Pt. 2, P. 300,	"	"	85
67. Marquez	"	"	Pt. 2, P. 266,	"	"	47
68. Orlando	"	"	Pt. 2, P. 354,	"	"	42
69. Costello	"	"	Pt. 2, P. 157,	"	"	37
70. Kelsey	"	"	Pt. 2, P. 251,	"	"	551

* Source: Records in file at Connecticut Supreme Court.

A-11

TABLE III A
CASES ARGUED OR DECIDED
RECENTLY

1. Smith	*	XXXV	30	CLJ	16
2. Watson	*	XXXV	29	CLJ	1
3. L'Heureuz	*				
4. Clements	*				
5. Barhato	*	XXXV	27	CLJ	10
6. Clemente	*				
7. Croom	*				
8. Soher	*				
9. Mullens	*				
10. Tully	*				

* Source: Records in file at Connecticut Supreme Court

TABLE IV TO
PETITIONER'S BRIEF

TABLE IV

ALABAMA	Title 15, Section 379, Code of Alabama.
ALASKA	Rule 9, Supreme Court Rules, Alaska Rules.
ARIZONA	Rule 75-A, Rules of Civil Procedure, A.R.S.
ARKANSAS	Article 43-2710, Ark. Stat.
CALIFORNIA	Rule 45, Calif. Rules of Ct.
COLORADO	Rule 10, Colorado Appellate Rules, Col. Rev. Stat.
DELAWARE	Rule 7, Sup. Ct. Rules, Del. Code Anno.
FLORIDA	Rule 69, Appellate Rules, F.S.A.
GEORGIA	Title 6-801-802, 810, C.G.A.
HAWAII	Chap. 641-14, Vol. 7, H.R.S.
IDAHO	Rule 9, Criminal Appellate Rules, Idaho Rule of Civil Pro.
KANSAS	60-2701, No. 6, Rules of the Supreme, Court, KSA
KENTUCKY	Rules of Crim. Proc. 12.56, Vol. 7, K.R.S.
ILLINOIS	110A Sec. 321, Ill. Sup. Ct. Rules.
INDIANA	Rule 7.2, Rules of Appellate Proc., Indiana Rules of Proc.
IOWA	Rule 340, Rules of Civil Proc., I.C.A.
LOUISIANA	Rule 1, La. Sup. Ct. Rules, L.S.A.
MAINE	Rule 74, Rules of Civil Proc., Maine Rules of Ct.
MARYLAND	Rule 826, Md. Rules of Proc., A.C.M.
MASSACHUSETTS	Rule 1:01, Sup. Judicial Ct. Rules
MICHIGAN	Rule 811, 812, 813, M.G.C.R.
MINNESOTA	Rule 110.01, Rules of Civil App. Proc., M.S.A.
MISSISSIPPI	Title 10, Section 1189, Miss. Code Stat.
MISSOURI	28.08, Sup. Ct. Rules, Mo. Rules of Ct.
MONTANA	Title 95-2408, Vol. 8, R.C.M.
NEBRASKA	Chap. 25-1912, Rev. Stat. of Nebraska.
NEVADA	Rule 74, Rules of Civil Proc., Nev. Rev. Stat.
NEW HAMPSHIRE	Rule 4, Rules of the Sup. Ct., App. Chap. 490.
NEW JERSEY	Rule 1:6-1, Supreme Ct. Rules.
NEW MEXICO	Supreme Court Rules, New Mexico Statutes, N.H.R.S.A.
NEW YORK	Rule 5526, CPLR.
NORTH CAROLINA	Title 1-283, 284, Title 15-180, G.S. N. Car.
NORTH DAKOTA	Rule 10, Rules of App. Proc., N.D.C.C.
OHIO	Rule 9, Ohio Rules of App. Proc., Ohio Code Supp.
OKLAHOMA	Rule 2.8, Crim. Appeals, O.S.A.
OREGON	19.078, 19.084, O.R.S.
PENNSYLVANIA	Rule 41, Sup. Ct. Rules, Pa. Rules of Ct.
RHODE ISLAND	Rule 75, Rules of Civil Procedure, G.L.R.I.
SOUTH CAROLINA	Rule 4, Sup. Ct. Rules, Code of Laws of S. Car.
SOUTH DAKOTA	Title 15-29, S.Dakota Compiled Laws.
TENNESSEE	Rule 1, Rules of Sup. Ct., T.C.A.
TEXAS	Article 40.09, T.S.A.
UTAH	Rule 75, Rules of Civil Procedure, U.C.A.
VERMONT	Rule 10, Rules of App. Proc., V.S.A.
VIRGINIA	Rule 5, Rules of Sup. Ct., Code of Va.
WASHINGTON	Rules on Appeal, R.S.W.A.
WEST VIRGINIA	Title 58-5-7, Vol. 16, W.Va. Code.
WISCONSIN	Section 251.25, Rules of Practice in Sup. Ct., W.S.A.
WYOMING	Rule 75, Rules of Civil Proc., W.S.

78

TABLE V TO
PETITIONER'S BRIEF

- 4 Appeal of jury's verdict only, no request for findings, draft findings, and findings required.
 5 Appeal by State; No request for findings, draft findings, and findings required.
 6 Motion to set appeal; No request for findings, draft findings, and findings required.
 7 Appeal involved right to withdraw guilty plea.
 8 Direct appeal resulting from advice to defendant in state habeas corpus appeal of same issues.

A-13

TABLE V

LENGTH OF TIME BETWEEN NOTICE OF
 APPEAL AND DRAFT FINDINGS,
 Nov. 1970 -- Jan. 1974

LENGTH OF TIME (MONTHS)	NUMBER OF CASES (1973)	NUMBER OF CASES (1972)	NUMBER OF CASES (1970-1)	TOTAL
0-2	6	4	7	17
3-7	4	6	13	23
8-11	4	6	4	14
over 11	<u>2</u>	<u>4</u>	<u>1</u>	<u>7</u>
	16	20	25	61

27

TABLE VI TO
PETITIONER'S BRIEF

75
A-14

TABLE VI

LENGTH OF TIME BETWEEN DRAFT
FINDING AND FINDING, NOV.,
1970 - JAN., 1974

<u>LENGTH OF TIME (MONTHS)</u>	<u>NUMBER OF CASES (1973)</u>	<u>NUMBER OF CASES (1972)</u>	<u>NUMBER OF CASES (1970-1)</u>	<u>TOTAL</u>
0-2	4	4	5	13
3-7	10	9	11	30
8-11	1	3	8	12
over 11	3	2	0	5

TABLE VII TO
PETITIONER'S BRIEF

77
A-15

TABLE VII

LENGTH OF TIME BETWEEN NOTICE
OF APPEAL AND FINDING, NOV.,
1970 - JAN., 1974

LENGTH OF TIME (MONTHS)

NUMBER OF CASES

0-2

0

3-7

12

8-11

17

over 11

28

91

78

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

MAY 1, 1972

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE COUNTER-FINDING

The State moves for an extension of time until June 1, 1972 within which to file its Counter-Finding for the following reasons:

The State is currently overwhelmed with 51 appeals to the Supreme Court of Connecticut and several appeals to the United States Court of Appeals for the Second Circuit; by petitions of habeas corpus to both the State and Federal Court and by hearings under the Federal Civil Rights Act. The Counter-Finding will be completed this month.

STATE OF CONNECTICUT

BY Jerrold H. Barnett
JERROLD H. BARNETT
Assistant State's Attorney

ORDER

The foregoing motion having been presented and it appearing that the same should be granted, it is hereby

ORDERED that the time within which to file the Counter-Finding for the State of Connecticut is hereby extended to June 1, 1972.

BY THE COURT

GEORGE J.
CLERK

5-10-72

Sup Detor 56

92

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

MAY 31, 1972

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE COUNTER-FINDING

The State moves for an extension of time until July 31, 1972 within which to file its Counter-Finding for the following reasons:

The State is currently overwhelmed with appeals to the Supreme Court of Connecticut and several appeals to the United States Court of Appeals for the Second Circuit; by petitions of habeas corpus to both the State and Federal Court and by hearings under the Federal Civil Rights Act. The Counter-Finding will be completed this month.

THE STATE OF CONNECTICUT

Filed: May 31, 1973

BY *Jerrold H. Barnett*
JERROLD H. BARNETT
Assistant State's Attorney

ORDER

6-8-72

The foregoing motion having been presented and it appearing that the same should be granted, it is hereby

ORDERED that the time within which to file the Counter-Finding for the State of Connecticut is hereby extended to July 31, 1972.

BY THE COURT

George J. [Signature]
CLERK

Supplement 59

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

JULY 31, 1972

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE COUNTER-FINDING

The State moves for an extension of time until September 11, 1972 within which to file its Counter-Finding for the following reasons:

The State is currently overwhelmed with 67 appeals to the Supreme Court of Connecticut and several appeals to the United States Court of Appeals for the Second Circuit; by petitions of habeas corpus to both the State and Federal Court and by hearings under the Federal Civil Rights Act.

STATE OF CONNECTICUT

BY

Jerrold H. Barnett
JERROLD H. BARNETT
Assistant State's Attorney

Aug. 14, 1972

ORDER

The foregoing motion having been presented and it appearing that the same should be granted, it is hereby

ORDERED that the time within which to file the Counter-Finding for the State of Connecticut is hereby extended to September 11, 1972.

BY THE COURT

GEORGE J.

CLERK

Step 1224 01

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

NOVEMBER 14, 1972

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE COUNTER-FINDING

The State moves for an extension of time until December 18, 1972 within which to file its Counter-Finding for the following reasons:

The State is currently overwhelmed with numerous appeals to both the State Court, Federal Court and the United States Supreme Court; by petitions of habeas corpus to both the State and Federal Courts and by hearings under the Federal civil rights act. The Counter-Finding has been completed but has only been partially typed due to illness in the secretarial staff.

THE STATE OF CONNECTICUT

BY

Jerrold H. Barnett
JERROLD H. BARNETT
Assistant State's Attorney

Filed: Nov. 14, 1972

Suppletory 70

82
NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

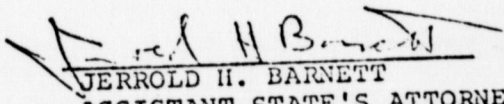
DECEMBER 6, 1972

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE COUNTER-FINDING

The State moves for an extension of time until March 15, 1973, within which to file its Counter-Finding for the following reasons:

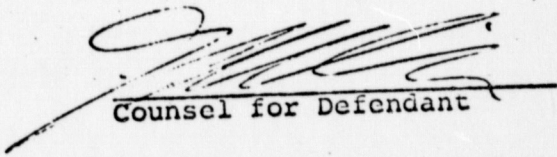
The State is currently overwhelmed with numerous appeals to both the State Court, Federal Court and the United States Supreme Court; by petitions of habeas corpus to both the State and Federal Courts and by hearings under the Federal Civil Rights Act.

STATE OF CONNECTICUT


JERROLD H. BARNETT
ASSISTANT STATE'S ATTORNEY

The foregoing extension is agreed to by counsel for the Defendant.

Filed: Dec. 14, 1972.

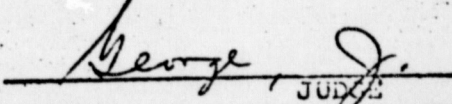

Counsel for Defendant

ORDER

The foregoing Motion having been presented and it appearing that the same should be granted, it is hereby

ORDERED that the time within which to file the Counter-Finding for the State of Connecticut is hereby extended to March 15, 1973.

BY THE COURT


JUDGE

96

Sept 27/72

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN R. MANSON, et. al. :
Respondents. : AFFIDAVIT

JOAN E. PAGLIUOCO, being first duly sworn, under oath, deposes and says that the following facts are true:

1. I am presently employed by the State of Connecticut as a court reporter for Superior Court at New Haven. I have been so employed since ^{August 1970.} ~~May~~ of 1966. J.P.

2. I was employed in the above capacity during the month of November 1970 and was the official court reporter in the case of STATE vs. JOHN RALLS.

3. The trial was completed on November 17, 1970. After the notice of appeal had been filed on December 23, 1970, I began to prepare the transcript.

4. As a reporter, I was scheduled to be in Court Tuesday through Friday from 10:00 a.m. to 5:00 p.m. Therefore, the preparation of this transcript was done at night, on weekends or on Mondays when I was not scheduled to be in Court.

5. The preparation of this transcript involved a two-step process. First, I dictated into a machine the court proceedings. As each tape was completed, I gave it to a private typist hired by me.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

6. A transcript of a portion of the trial transcript was completed on March 22, 1971. Thereafter, I had that portion of the transcript signed by the official court reporter who thereupon sent one copy to the attorney representing Mr. Ralls and another to the trial judge. It is my understanding that before the trial judge certified the transcript, he asked the state's attorney to proofread it. The state's attorney returned one page to me to correct a typographical error. Thus, although the transcript of the testimony was completed on March 22, 1971, the certification by the judge did not occur until sometime after this date.

7. The remainder of the transcript, which included the voir dire, was not commenced until after the completion of the trial testimony. Because only certain portions of the voir dire were requested by the attorney representing Mr. Ralls, Mr. DeMayo, I had to read through the entire voir dire to choose certain parts before beginning the dictation. The preparation of the voir dire transcript was completed by June 16, 1971.

8. During the time I was preparing the Ralls transcript, there were numerous other transcripts which had to be completed simultaneously. The workload was sufficient to cause a considerable delay in preparation of this transcript. During the preparation of the Ralls transcript, there was no typist for the County of New Haven, making it necessary for each reporter to arrange for his own typist. Therefore the typist whom I hired to do the Ralls appeal also typed all other tapes of court proceedings which I had dictated. During this time, any sentencing

-3-

transcripts ordered by a judge, or other short transcripts, took priority over the preparation of the Ralls transcript. If the county of New Haven had had a typist, the private typist would have been able to work only on the appeal case and the state typist could have completed the shorter transcripts. Both the county of Hartford and the county of Bridgeport had at least one state typist and so did not have this problem.

9. The delay for the preparation of the Ralls transcript was not unusually long. The Ralls transcript was not unusually long and most trial transcripts of comparable length took a similar amount of time to prepare. There is, therefore, a direct correlation between the length of a transcript and the amount of time necessary to complete it. Other factors which added to the delay in this case were the workload and my schedule at that time. Moreover, the facilities at the Superior Court were not conducive to dictation and so no work on the Ralls transcript could have been completed at the courthouse. Also, there was a backlog of transcripts which had to be prepared at that time.

10. If this appeal transcript had to be prepared in 1974, it would take at least six months if not longer due to our increased workload and increased number of court appearances, including those now required on Mondays.

Joan E. Pagliuco
JOAN E. PAGLIUCO

Subscribed and sworn to before me this 25th day of January, 1974.

Alfred J. Lusk
NOTARY PUBLIC
My Comm. Expires Apr 1978

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

99

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,	:	CIVIL NO. H-205
Petitioner,	:	
vs.	:	
JOHN R. MANSON, et. al.	:	
Respondents.	:	<u>A F F I D A V I T</u>

JOHN WESLEY RALLS, being first duly sworn, under oath, deposes and says that the following facts are true and correct:

1. I am presently incarcerated at the Connecticut Correctional Institution at Somers, Connecticut, serving a sentence of life imprisonment for Murder in the Second Degree pursuant to a conviction on November 17, 1970, after a jury trial in Connecticut Superior Court at New Haven.

2. At the trial I was represented by MR. ANTHONY DeMAYO, public defender for the city of New Haven. Although I made repeated efforts through my correctional counselor to have Mr. DeMayo contact me before my trial date, he did not do so. Although he and I were both present in court at the time of the Grand Jury indictment and at the time I pleaded not guilty, he did not discuss my case with me on either of those occasions. I did not confer with Mr. DeMayo about my case until the day the trial actually began. I conferred only once with an investigator from the public defender's office a week before my trial. To the best of my recollection, however, I discussed only my family background with him but did not discuss any facts of my case.

3. During the trial and after the prosecution had presented its case, I requested Mr. DeMayo to talk to witnesses on my behalf, including my present employer, and to call those witnesses to the stand. I also

told Mr. DeMayo that I wished to take the stand on my own behalf. Contrary to my requests, Mr. DeMayo did not present a defense. The witnesses who were in fact available to testify are among others, KENNETH RALLS, FLORENCE SINOW, and DAVID CAMPBELL..

4. At approximately 8:15 p.m. on November 17, 1970, the jury was brought into the courtroom at their own request. At this time an attorney, MR. FRANCIS McQUADE, approached me and told me that he was standing in for Mr. DeMayo. Mr. McQuade admitted to me that he had no knowledge about my case. I was not present at any conversations which took place between the trial judge and Mr. McQuade, although I understand that such conversations did take place as reflected in the transcript. At no time did I express my agreement to this substitution of counsel either to Mr. McQuade or to the trial judge. At no time did I intend to waive my right to be represented by my trial attorney, Mr. DeMayo.

5. On December 28, 1970, I filed a notice of appeal through my attorney Mr. DeMayo. On September 1, 1971, I requested the Court to appoint another attorney to represent me on appeal. On September 28, 1971, a motion to withdraw was filed by Mr. DeMayo, heard and granted by the trial judge. On that same day, Mr. John Williams was appointed to represent me. Whatever delay occurred regarding that substitution was known and agreed to by me. The only motion for an extension of time of which I have been aware, was the motion filed by Mr. Williams after his motion for a typewritten brief had been denied. All other delays in this case whether caused by extensions of time or otherwise have been unknown to me. I have been anxiously awaiting a decision on my appeal since December 28, 1970. I would have objected to any and all extensions of time by the State if I had been informed of such requests.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117


6. I have received an abundance of correspondence from Mr. Williams informing me of the various stages of my appeal. None of the letters I have received from him indicated that the State had requested and thereafter been granted ten extensions of time.

7. On September 9, 1972, I wrote a letter to Mr. Williams indicating my impatience and agitation at the delay and requesting that he file any and all motions to prevent unjust delay on the part of the prosecutor. I did receive a letter from Mr. Williams on September 13, 1972, but it did not mention that he had consented to the State's motion for an extension of time.

8. I understand that all of the letters referred to, both from Mr. Williams and from me are being submitted to this Court. I, therefore, waive any attorney-client privilege regarding these letters in order that this Court may have the opportunity to see that I was never informed of any extensions of time nor did I agree to consent to motions by anyone.


JOHN WESLEY RALLS

Subscribed and sworn to before me this 23rd day of January, 1974.


NOTARY PUBLIC
Commissioner of The Superior Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN R. MANSON, et. al., :
Respondents. : A F F I D A V I T

STATE OF CONNECTICUT: ss.
COUNTY OF NEW HAVEN:

JOHN WILLIAMS, being duly sworn, deposes and says:

1. That he is an attorney licensed to practice in the State of Connecticut.

2. That in October of 1971 he was appointed by Judge George of the Superior Court of New Haven as a special Public Defender for JOHN WESLEY RALLS, petitioner herein, and that he presently represents Mr. Ralls in his appeal to the Connecticut Supreme Court.

3. That prior to this appointment Mr. Ralls had been represented by ANTHONY DeMAYO, of the New Haven Public Defender's office, and that Mr. DeMayo had filed a proposed finding of fact and request for finding of fact in the Ralls matter.

4. That, upon the appointment, your deponent read the trial transcript and determined that an amended proposed finding and request were necessary in order that all potential reversible error and matters of fact were put before the Connecticut Supreme Court on the appeal.

GAL CLINIC
UNIVERSITY
CONNECTICUT
SCHOOL OF LAW

Water Hartford
Campus
West Hartford,
Connecticut 06117

5. That your deponent moved on November 15, 1971, for permission to file such documents before Judge George and for an extension of time to file them until December 31, 1971, which motion was granted on December 6, 1971.

6. That, on December 15, 1971, your deponent moved for a second extension of time until February 1, 1972, to file, which motion was granted on January 11, 1972.

7. That on January 3, 1972, the amended draft finding and request for finding were filed with the State Court, and a copy is submitted herewith as Williams Exhibit No. 1.

8. That between January 4, 1972, and January 5, 1973, the State of Connecticut, representing appellees in the matter before the Connecticut Supreme Court, asked for and received ten extensions of time within which to file their counter-findings.

9. That your deponent did not object to any of the ten motions and orders for extensions of time, and did in fact stipulate to the last extension of time dated December 6, 1972.

10. That your deponent did not object to these extensions because he had been told by Jerold Barnett, State's counsel on the case that he was overworked, that he was receiving insufficient help, that he was then working nights and taking work home on weekends and that the work was ruining his family life. Indeed, your deponent would often pass Mr. Barnett's office late at night and notice that he was there working.

-3-

11. That another reason for not objecting was that your deponent had several times objected to extensions of time in appeals to the Connecticut Supreme Court and that these motions for time extensions had nevertheless been summarily granted. Thus your deponent felt that such opposition would be futile, and would serve no purpose other than to irritate Mr. Barnett who could not, without additional assistance, move the case along more quickly. Nevertheless, your deponent did request that Mr. Barnett give preferential treatment to Mr. Ralls' case so as to expedite it, and in agreeing to the tenth extension of time, your deponent was informed by Mr. Barnett that the counter-findings had been finished and were in the process of being typed.

12. That after the filing of the counter-finding, the court, by Judge George filed its finding in March of 1973, but that this finding was a partial one in that the court had omitted necessary portions of the finding and the court then retracted the finding and refiled in May of 1973.

13. That, on information and belief, the Record went to the printer in June of 1973, after submission of the assignment of error, and were returned to counsel, in printed form, on October 31, 1973, some four or more months later.

14. That during July of 1973 your deponent submitted the appendix to his printer, WILLIAM MACK, so that the appendix could be printed and paginated and used in the brief. No further consideration was given to

the appendix since your deponent had been told by the printer that the appendix would not be ready until late Fall, 1973, since the printer was engaged in a lengthy printing for the State of Connecticut on an appeal. In December of 1973, several weeks after receipt of the Record, your deponent contacted the printer and was told the appendix would take another six to eight weeks of completion.

15. When your deponent was informed that the appendix would take up to two months for printing, and knowing the brief would take several weeks for preparation and then at least one month to print, your deponent then moved for an opportunity to file a typewritten brief in order to attempt to comply with the 45 day rule of the State Supreme Court in regard to submission of briefs. The Court had ruled favorably in a recent decision regarding typewritten briefs but, without an opinion your deponent's application was denied. *The State had opposed the application.* Thereafter your deponent filed a motion for an extension of five months which motion was filed on December 10, 1973, and has been opposed by the State on the basis, inter alia, of Mr. Ralls' application to the United States District Court. On information and belief, no decision has been reached by the State Court.

16. Your deponent ~~has~~ met with Mr. Ralls personally. All *other* communications with Mr. Ralls which are pertinent to the reasons for delay have been by letter both from and to him, and all are contained within this affidavit as Williams Exhibits through Mr. Henry Tamarin of my office met with Mr Ralls at the prison in 1972. The anticipated delays in the appeal were discussed then, and they were discussed at my earlier meeting with Mr. Ralls. The letters, however, fairly represent the substance of those discussions. *JW*

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW
Greater Hartford
Campus
West Hartford,
Connecticut 06117


-5-

17. On information and belief, the Connecticut Supreme Court does not sit during July, August and September to hear argument or to decide appeals. Additionally, I have been given the same information by Jerold Barnett, of the State.

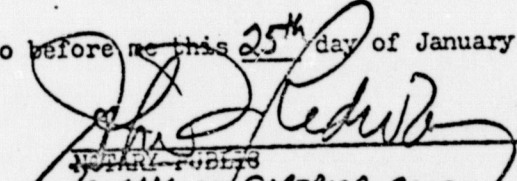
18. As to the motion for an extension of time, Mr. Diette, of the State's Attorney's office indicates Judge George is too sick to speak with counsel.

19. Regarding the appellant's brief, your deponent has not yet commenced writing it, and will not until the appendix is filed, but the research is done. It is expected the brief will be a long one.

20. As to communicating with Mr. Ralls, your deponent did not, *other than as mentioned above, 1/16* communicate regarding the year's extension including the one consent to an extension, but your deponent has attempted to keep Mr. Ralls otherwise informed regarding the processes of the case on appeal.


JOHN WILLIAMS

Subscribed and sworn to before me this 25th day of January.


NOTARY PUBLIC
COMM. OF SUPERIOR COURT

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

Step 1 of 1

94

1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN MANSON, et. al., :
Respondents. :

A F F I D A V I T

STATE OF CONNECTICUT:
COUNTY OF NEW HAVEN : ss.

WILLIAM J. MACK, JR., duly sworn, deposes and says:

1. I am the President of the William J. Mack Company located at 445 Washington Avenue, North Haven, Connecticut, and have been President since before July 1973.
2. The William J. Mack Company, hereafter known as the Company, is a printing firm which, as one of its services, prints legal documents for lawyers including Connecticut Supreme Court briefs and ^{appendices.} ~~dependencies.~~
3. In July of 1973 an attorney by the name of JOHN WILLIAMS from New Haven, Connecticut, came to the Company with a request that we print an Appendix to a brief in appeal to the Connecticut Supreme Court and he submitted the Appendix to us. The name of the person appealing was JOHN WESLEY RALLS.
4. At the time Mr. Williams came to us with the Appendix, we were doing a very large order for JEROLD BARNETT of the State's Attorney's office. This job was not finished until September 1973.

5. Because of the large job for Mr. Barnett and because of summer vacations, the Ralls' material, submitted by Mr. Williams, was set aside in my office.

6. There was no communication between the Company and Mr. Williams from July, 1973, until December, 1973. In December, 1973, Mr. Williams called us to inquire about the Appendix. He was told at that time about our concern regarding payment of the bill, and Mr. Williams said he would submit a letter to us from ANTHONY DeMAYO of the Public Defender's office indicating that Mr. Williams had been appointed a Special Public Defender for Mr. Ralls, and that the State would pay the bill for the Appendix.

7. The reason the Appendix remained in my office from July, 1973, until December, 1973, is because I had gone to Brazil in August and expected to be gone a few days, but instead took several weeks, and when I returned I forgot about the Appendix being in my office. Nevertheless, had Mr. Williams called me to inquire about the Appendix before December, 1973, we probably could have saved about a month in having the Appendix printed.

8. Based on the information contained in Paragraph 6 herein, the printing of the Appendix has been commenced. At the date of this affidavit about one-third of the pages have been set and two-thirds remain, as well as the spacing. When the setting and spacing are completed, we will have to show the pages to Mr. Williams, then make the corrections and then paginate. We estimate six to eight weeks for completion of the Appendix.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

96

September 27/72

-3-

9. ^{IF} the brief for the appellant was received for printing after completion of the Appendix, and it contained about 70 pages, our experience indicates that it would take about four weeks for completion.

William J. Mack, Jr.
WILLIAM J. MACK, JR. (Affiant)

Subscribed and sworn to before me this 25th day of January, 1974.

Kathleen E. Rose
COMMISSIONER OF THE SUPERIOR COURT

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

110

8 Nov 73

NO. 16334

STATE OF CONNECTICUT

SUPERIOR COURT

VS.

AT NEW HAVEN

JOHN RALLS

OCTOBER 31, 1973

MOTION FOR PERMISSION TO FILE TYPEWRITTEN BRIEF

The defendant moves that he be granted permission to file a typewritten brief in his appeal in the captioned matter for the following reasons:

1. The Record herein was filed today.
2. He must file his brief within 45 days.
3. He cannot submit his brief to the printer until the printer returns the galleys of the Appendix, because the Appendix pages must be cited at relevant portions of the brief.
4. His Appendix was submitted to the printer in July of 1973 and galleys have not yet been supplied.
5. Unless he is permitted to file a typewritten brief, it will not be possible to file a brief within the time provided by the Practice Book, for the reasons aforesaid.

For the above reasons, defendant further moves that he be permitted, in his said typewritten brief, to refer to pages of the transcript rather than to pages of the Appendix.

THE DEFENDANT

NEW HAVEN COUNTY
SUPERIOR COURT
FILED

NOV 2 1973

LEONARD J. GILHULY
ASST. CLERK

BY:

John R. Williams
Special Public Defender
His Attorney

Suppley 88

111

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

NOVEMBER 14, 1973

STATE'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION FOR
PERMISSION TO FILE TYPEWRITTEN BRIEF

The State opposes the defendant's motion for permission to file a typewritten brief for the following reasons:

1. The defendant has failed to show good cause such as would justify a suspension of the rules of this Court;
2. The defendant has failed to cite an unusual delay in the appeal process;
3. To allow the request in this motion would establish a precedent from which the Court could withdraw only with extreme difficulty;
4. The defendant's claim that, without permission to file a typewritten brief, he will not have his brief within the time allowed by the Practice Book, is made frivolous because of the longstanding policy of the State's Attorney's Office and of the Courts to allow reasonable extensions of time within which to complete the brief.

Stypley 70

99

For the above stated reasons, the State would oppose the Defendant's Motion for Permission to File a Typewritten Brief.

THE STATE OF CONNECTICUT

BY Ernest J. Diette
ERNEST J. DIETTE
Assistant State's Attorney

CERTIFICATION

Certified in accordance with Practice Book, Section 80,
this 14th day of November, 1973, to:

John R. Williams, Esq.
265 Church Street
New Haven, Connecticut

Ernest J. Diette
ERNEST J. DIETTE
Assistant State's Attorney

2.

Supp 9/

113

No. 16334
State of Connecticut v. John Rella

December 4, 1973. The defendant's
motion for permission to file type-
written briefs in the appeal from the
Superior Court in New Haven County
is denied.

By the Court,

Thomas
Chief Justice

114

NO. 16334

STATE OF CONNECTICUT)	SUPERIOR COURT
)	
VS.)	AT NEW HAVEN
)	
JOHN RALLS)	DECEMBER 10, 1973

MOTION FOR EXTENSION OF TIME

The defendant moves that he be granted an extension of time until May 1, 1974, within which to file his appeal brief in this case. In support of this motion, he represents as follows:

1. Counsel submitted the appendix to the brief to legal printers in North Haven in July of 1973 and was advised that a backlog of legal printing would result in some delay.

2. The galleys of said appendix have not yet been received from said printers.

3. Said galleys are an essential prerequisite to submitting the brief to the printer, because the brief must contain citations to appropriate pages of the appendix.

4. It is reasonable to assume that the same delays encountered in printing of the appendix will obtain with respect to printing the brief itself.

5. Because of the foregoing massive delays, and because the defendant is incarcerated, counsel undersigned filed with the Supreme Court a motion for permission to file a typewritten brief in this case. The Supreme Court denied said motion on December 4, 1973, by order entered at New Haven on December 7, 1973. Consequently, there is no alternative to the relief herein requested.

NEW HAVEN COUNTY
SUPERIOR COURT
FILED
DEC 11 1973
LEONARD J. GIDLEY
CLERK

102

THE DEFENDANT

BY: 

John R. Williams
Special Public Defender
265 Church Street
New Haven, Connecticut 06510
His Attorney

ORDER

The foregoing motion having been heard, it is hereby ORDERED:
That the defendant is granted an extension of time until May 1, 1974, within
which to file his appeal brief in this case.

THE COURT

BY _____, J.

Service certified per P.B.



Sept 19 94

116

103

A-1

227299


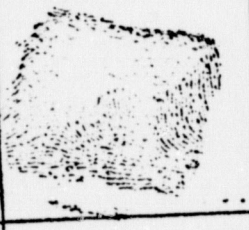
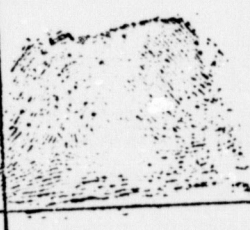
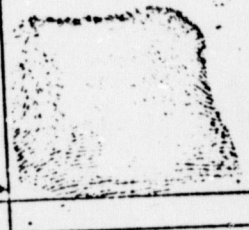

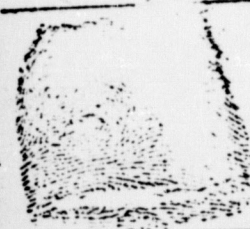
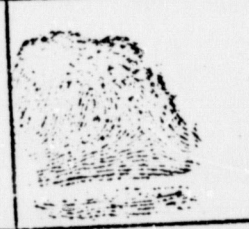
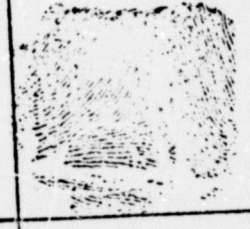

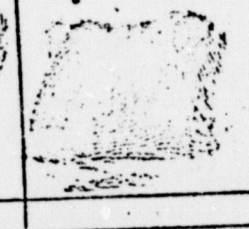
Name Rawls, John Wesley
(Ralls, " ")

Alias _____

Finger-Print
Classification _____Reference
Classification _____

Y-69-0140C

No. _____ Color N Sex M

1. Right Thumb	2. R. Fore Finger	3. R. Middle Finger	4. R. Ring Finger	5. R. Little Finger
				
6. Left Thumb	7. L. Fore Finger	8. L. Middle Finger	9. L. Ring Finger	10. L. Little Finger
				

Impressions taken by:

(Signature of official taking prints)

Date impressions taken 2-10-70

Four fingers taken simultaneously

Note amputations

Signature of person fingerprinted

John Ralls

Four fingers taken simultaneously

Left Hand

L. Thumb

R. Thumb

Right Hand



PLEASE DO NOT FOLD THIS CARD

104

Connecticut State Police, Hartford 1, Conn.

STATE BUREAU of IDENTIFICATION



Please furnish all additional criminal history and police record on separate sheet

Copies of this print to

2-20-20

*Exhibit on to determine only
(Side view)*

Q Okay. Now, to get back to this fingerprint, I believe you testified that there were five latent prints delivered to you by Detective Cafano of the Hamden Police Department?

A Yes, sir.

Q Did you compare any of them with fingerprints of John Ralls the defendant in this case?

A Yes, I did.

Q Did you find, in your opinion, as to whether or not any of the latents compared favorably with the fingerprint card of John Ralls?

A Yes, I did.

Q Showing you this fingerprint card, Sergeant, can you tell me whose fingerprint card that is?

A This is a fingerprint card of John Ralls, which was on file at the Bureau of Identification, also C.S.P.I. 227299.

Q What is the C.S.P. number?

A It is a central bureau for all the criminal arrest records in the State of Connecticut.

Q All right.

THE COURT: Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It does not affect this case, nor is it introduced for that purpose.

MR. SPERANDEO: Positively not.

MR. DeMAYO: I think at this point the jury ought to be excused.

THE COURT: All right. I will excuse the jury.

(The jury left the courtroom.)

MR. DeMAYO: Your Honor, we went through a rather elaborate precaution to avoid any mention of where this card came from.

THE COURT: I am sure the witness didn't know about it.

MR. DeMAYO: But he shouldn't have been asked to identify what this was.

MR. SPERANDEO: I did not have a chance to ask the further question as to this witness not knowing anything about the facts of this card, just the card was taken. The jury certainly, with all common sense, will know that fingerprints had to be taken from someplace, and I was just about to ask the question whether or not he just compared these prints. That's all.

THE COURT: As I say, I think I could duly caution the jury on it. I don't feel it is grounds enough for me, at this point, to declare a mistrial, but I think it is dangerously real close to it.

✓ MR. DeMAYO: I will move for a mistrial.

THE COURT: I will overrule it, and note an exception.

MR. DeMAYO: Thank you, your Honor.

THE COURT: You may recall the jury.

(The jury returned to the courtroom.)

THE COURT: Thank you. You may proceed.

MR. SPERANDEO: Thank you, your Honor. I want to make it perfectly clear that the only purpose of offering this card is to show that Sergeant McDonald compared a latent print with the prints of John Ralls.

THE COURT: Okay. I want to caution the jury again, that I don't know what the extent it covers, whether it might have been some minor matter, or it may have been an application for employment. You are not to give it any more weight than that. This man is being tried here on this case only.

MR. SPERANDEO: May it be marked, your Honor?

THE COURT: It may be marked State's Exhibit S.

(The above-mentioned fingerprint card of John Ralls was received and marked State's Exhibit

(The jury began deliberations at or about 2:15 p.m.)

(At or about 5:00 p.m. the following occurred:)

THE COURT: Resume our session. You may call the jury.

(The jury returned to the courtroom.)

THE COURT: I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of a verdict.

You could readily see, if somebody get sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sit-down dinner?

A JUROR: I think it is going to be a while.

THE COURT: That is all I need to know. You may retire to the jury room, and arrangements will

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

NO. 74-1682

JOHN WESLEY RALLS, PETITIONER-APPELLEE
VS.

JOHN R. MANSON, COMMISSIONER OF
CORRECTION OF THE STATE OF
CONNECTICUT, RESPONDENT-APPELLANT

RESPONDENT'S APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
APPENDIX TO RESPONDENT'S BRIEF

Jerrold H. Barnett
Assistant State's Attorney
Drawer H, Amity Station
New Haven, Conn. 06525

111

INDEX TO RESPONDENT'S APPENDIX

	<u>PAGE</u>
1. Index to Record on Appeal	1
2. Docket Entries	2
3. Judgment, <u>Ralls v. Manson</u> , No. H-205 (D. Conn.)	4
4. Memorandum of Opinion by Honorable M. Joseph Blumenfeld, U.S.D.J.	5
5. Pro Se Petition for Writ of Habeas Corpus	63
6. Order issued on Pro Se Petition	68
7. Return to Pro Se Petition	70
8. Letter from Michael Dearington, Esq., to Honorable M. Joseph Blumenfeld, enclosing printed record of Connecticut Supreme Court	76
9. Amended Petition for Writ of Habeas Corpus	77
10. Stipulation	83
11. Amended Return	85
12. Motion to Dismiss	94
13. Docket entries of the Supreme Court of New Haven County in <u>State v.</u> <u>Ralls</u> , No. 163374, submitted to the District Court as Petitioner's Exhibit 2	96
14. Affidavit of John R. Williams, Esq., dated January 25, 1974, submitted to the District Court on behalf of Petitioner	103
15. Letter from John R. Williams, Esq., to Petitioner, dated December 18, 1971, submitted to District Court as Exhibit 10 to Affidavit of John R. Williams, on behalf of Petitioner	108
16. Letter from John R. Williams, Esq., to Petitioner, dated June 29, 1973, submitted to District Court as Exhibit 36 to Affidavit of John R. Williams	110

	<u>PAGE</u>
17. Affidavit of William J. Mack dated January 25, 1974, submitted to District Court, on behalf of Petitioner . .	111
18. Affidavit of Jerrold H. Barnett, Esq., dated March 12, 1974, submitted to the District Court as Respondent's Exhibit 5	114
19. Affidavit of William J. Mack, dated March 12, 1974, submitted to the District Court as Respondent's Exhibit 6	118
20. Motion, dated October 31, 1973, made by John R. Williams, Esq. as Petitioner's attorney to the Connecticut Supreme Court for permission to file typewritten brief in <u>State v. Ralls</u> , submitted to the District Court as Respondent's Exhibit 2 . .	120
21. Motion, dated December 10, 1973, by John R. Williams, Esq., as Petitioner's attorney to the Superior Court for an extension of time until May 1, 1974 for the filing of his Connecticut Supreme Court brief in <u>State v. Ralls</u> , submitted to the District Court as Respondent's Exhibit 3. (The granting is shown in the last entry of the Superior Court docket sheet, No. 13, supra	122.
22. Objection to motion for extension of time by the State which was submitted to the District Court as Respondent's Exhibit 4	124
23. Letter from Robert J. Leeney to Jerrold H. Barnett, Esq., dated May 14, 1974, attesting to date of Journal Courier article	126
24. Article regarding <u>Ralls v. Manson</u> in the May 8, 1974 edition of the New Haven Journal Courier	127
25. Motions filed by John R. Williams as Petitioner's attorney in <u>State v. Ralls</u> after the decision in <u>Ralls v. Manson</u> :	
a. Motion for Reduction of Bond	129
b. Motion to Hire Private Investigator . .	131
c. Motion to Strike Language from Information	133

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS

VS.

JOHN MANSON, COMMISSIONER OF
CORRECTIONS, STATE OF
CONNECTICUT

CIVIL NO. H-205

INDEX TO RECORD ON APPEAL

DOCUMENT NO.

Copy of Docket Entries	A
Petition For A Writ of Habeas Corpus	1
Order to Show Cause Why A Writ of Habeas Corpus Should Not Be Issued	2
Return to Application For A Writ of Habeas Corpus	3
Amended Petition For Writ of Habeas Corpus	4
Order filed January 11, 1974	5
Affidavit of John Wesley Ralls	6
Affidavit of William J. Mack Jr.	7
Affidavit of Joseph J. Byk	8
Affidavit of Joan E. Pagliuco	9
Affidavit of John Williams	10
Second Affidavit of John R. Williams	11
Stipulation filed January 28, 1974	12
Certificate of Service	13
Stipulation filed January 29, 1974	14
Respondent's Motion to Dismiss or For Summary Judgment, Motion For Permission To File Amended Return to Amended Petition For A Writ of Habeas Corpus, Amended Return to Amended Petition For Writ of Habeas Corpus and Affidavit of Jerrold H. Barnett attached	15
Memorandum of Decision	16
Judgment	17
Notice of Appeal	18
Appearance of Jerrold H. Barnett, Esq.	19
Application for A Certificate of Probable Cause with endorsement thereon	20
Motion For Stay of Execution Pending Appeal with Order thereon	21
Clerk's Certificate	22

UNITED STATES DISTRICT COURT

11-30-73 Placed on trial list.

MJB

D. C. Form No. 105 Rev.

[illegible]

H 205

JEROME A. MARKOWSKI
Clerk, U. S. District CourtBy: A. M. Shew
Deputy Clerk

DATE	PROCEEDINGS	Date Of Judgment
1973		
10-17	1. Petition for a writ of habeas corpus filed. Order to Show Cause Why a Writ of Habeas Corpus should Not be Issued, filed. Blumenfeld, J. m 10-19 (ans. 10-29)	
10-26	2. Marshal's return showing service on all defendants, filed.	
10-30	3. RETURN TO APPLICATION FOR A WRIT OF HABEAS CORPUS, filed.	
10-30	4. Record Before the Supreme Court of Conn. of Petitioner filed.	
12-21	5. Amended Petition for Writ of Habeas Corpus filed.	
1-11-74	6. ORDER Blumenfeld, J. m 1-14-74 Pltf. brief to be filed 2-8-74 and Def. briefs to be filed by 2-15-74. Copies mailed to counsel of record.	
1-28	7. Affidavit of John W. Ralls.	
"	8. Affidavit of Wm J. Mack	
"	9. Affidavit of Joseph J. Byk	
"	10. Affidavit of Joan E. Pagliuco	
"	11. Affidavit of John Williams	
"	12. Exhibit #1 to affidavit of J. Williams	
"	13. Exhibits 2-55 to Affidavit of John Williams	
"	14. Stipulation filed by & between parties Re: Superior Court, New Haven, Court hearing.	
"	15. Stipulated Petitioners Exhibits #1 filed.	
"	16. Stipulated Petitioners Exhibits #2-95 filed.	
"	17. Certificate of Service filed by Morton Cohen.	
1-29	18. Stipulation filed by & between parties (Re: Exhibit #1)	
2-22	19. Petitioner's Brief in Support of Amended Petition filed.	
2-27	20. Certificate of Service filed on #19 Petitioners Brief.	
3-12	14. Re: the time to file a response is extended to 3/15/74. Blumenfeld, J.	
4-8	21. Second Affidavit of John R. Williams.	
5-7	22. MEMORANDUM OF DECISION filed. Blumenfeld, J. m 5/10/74 Copies mailed to counsel of record.	
5-15	20A. Respondent's Motion to Dismiss or for Summary Judgment filed.	
5-10	23. JUDGMENT entered. Markowski, C. m 5-13-74. Copies mailed to counsel of record.	
5-14	24. Notice of Appeal filed. Copies mailed to counsel of record.	
"	25. Appearance of Jerrold H. Barnett entered for Defendant.	
5-15	B, J. 26. Application for A certificate of Probable Cause filed. Probable cause	m5/1
5-16	unnecessary Civil Appeals Management Plan and Form C & D mailed to Atty Barnett.	
5-16	Ruling on Request for Certificate of Probable Cause Entered. Blumenfeld, J. Copies mailed to counsel of record.	
5/17	27. Ruling on Motion for Stay of Execution Pending Appeal filed. Blumenfeld, J. Copies mailed to Messrs. Barnett and Cohen.	
	5/20/74 (Motion Granted on condition that within 5 days (no later) than 5/22/74) that respondent files a motion for an expedited appeal and will seek no xxxxx extensions of time to docket the appeal. If the Circuit Court of Appeals grants the motion it will hear the case on typewritten briefs.)	
5-30	File mailed to K. Mitchell in New Haven.	
5-30	28. Copy of Motion for An Expedited Appeal sent to the U.S. Court of Appeals.	

B

MICROFILM

MAY 13 1974

NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

MAY 16 3 25 PM '74

JOHN WESLEY RALLS

vs.

JOHN R. MANSON, Commissioner of
Corrections of the State of
Connecticut

U.S. DISTRICT COURT
CIVIL ACTION NO. H-205

JUDGMENT

The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge;

And the Court having filed its Memorandum of Decision on May 7, 1974, ordering that a Writ of Habeas Corpus issue out of this Court discharging the Petitioner from custody unless the Petitioner, John Wesley Ralls, is afforded a new trial within sixty days;

It is accordingly ORDERED and ADJUDGED that a Writ of Habeas Corpus issue out of this Court discharging the Petitioner from custody unless the Petitioner, John Wesley Ralls, is afforded a new trial within sixty days.

Dated at Hartford, Connecticut, this 10th day of May, 1974.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: Adelaide G. Celentano
Deputy Clerk

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT '74

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

JOHN WESLEY RALLS

v.

CIVIL NO. 'H-205

JOHN R. MANSON, Commissioner :
of Corrections of the State :
of Connecticut :

MEMORANDUM OF DECISION

Petitioner was convicted of murder in the second degree on November 17, 1970, after a jury trial in Connecticut Superior Court at New Haven. On December 11, 1970, he was sentenced to a term of life imprisonment. He is presently incarcerated at the Connecticut Correctional Institution at Somers. He seeks a writ of habeas corpus in this Court, claiming that his rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution were denied during his trial in state court. Before the merits of his substantive claims may be assessed, however, it must be determined whether 28 U.S.C. § 2254(b), which requires state prisoners to exhaust available state court remedies before applying for federal habeas corpus, bars this Court from considering petitioner's claims.

I. EXHAUSTION OF STATE REMEDIES

A. Petitioner's Direct Appeal

The chronology of the petitioner's direct appeal in the state courts is not in dispute. Petitioner's trial counsel,

5

a Public Defender for New Haven County, was originally appointed to represent petitioner on appeal. On December 30, 1970, the Public Defender filed a notice of appeal of the petitioner's conviction in New Haven Superior Court.^{1/} On August 19, 1971,^{2/} the Public Defender filed a request for a finding and a draft finding,^{3/} as required by Sections 629 and 630 of the Connecticut Practice Book. The petitioner subsequently sought a change of counsel, and on October 28, 1971, the Public Defender was granted permission to withdraw as petitioner's appellate counsel and a Special Public Defender was appointed to represent the petitioner.^{4/} On November 15, 1971, the Special Public Defender moved for and received permission to file an amended draft finding.^{5/} On December 15, 1971, the Special Public Defender filed an amended draft finding, and on January 3, 1972, he filed an amended request for a finding.^{6/} Thereafter the State's Attorney moved for

^{1/} Petitioner's Exhibit 4, "Notice of Appeal."

^{2/} A portion of the transcript, containing the testimony at the trial, was completed on March 22, 1971, and sent to the Public Defender. The remainder of the transcript, containing the voir dire, was completed by June 16, 1971. Affidavit of Joan E. Pugliuco, court reporter for Superior Court at New Haven, dated January 24, 1974.

^{3/} Petitioner's Exhibit 11, "Request For A Draft Finding."

^{4/} See Petitioner's Exhibit 2(c), Superior Court Docket #16334.

^{5/} Id.

^{6/} Id.

and received numerous extensions of time in which to file its draft counterfinding,^{7/} required by Section 631 of the Practice Book. The draft counterfinding was ultimately filed on January 5, 1973.^{8/} The trial judge filed his finding, required by Sections 634-635 of the Practice Book, on March 12, 1973.^{9/} Both the Special Public Defender and the State's Attorney immediately moved to correct the trial judge's finding, pursuant to Section 636 of the Practice Book, and the trial judge filed a corrected finding on May 2, 1973.^{10/} The Special Public Defender filed assignments of error, required by Section 612 of the Practice Book, on May 29, 1973.^{11/} The record in the case finally went to the printer in June of 1973. The printed record was sent to the Connecticut Supreme Court and the parties on October 31, 1973.^{12/} An appendix to the record, which the Special Public Defender sent to the printer in July

^{7/} See Petitioner's Exhibit 2(c), (d), Superior Court Docket #16334.

^{8/} See Petitioner's Exhibit 2(e), Superior Court Docket #16334.

^{9/} Id.

^{10/} Id.

^{11/} Id.

^{12/} Respondent's Exhibit 1.

of 1973, is being printed at the present time.^{13/} Thus, almost three and one-half years after the petitioner's notice of appeal was filed, briefs have still not been printed or filed with the Connecticut Supreme Court, nor has a date been set for argument before the Connecticut Supreme Court on petitioner's direct appeal of his state court conviction.^{14/}

B. Inordinate Delay and the Absence of Effective Available State Corrective Process Under 28 U.S.C. § 2254(b)

The Judicial Code, 28 U.S.C. § 2254, provides as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."

This provision has generally been construed to foreclose issuance by a federal court of a writ of habeas corpus until the petitioner has presented his claims to the state courts and received a decision in his case:

"It has been settled since Ex parte Royall, 117 U.S. 241 (1886), that a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus. . . . We have consistently adhered to this federal policy, for 'it would be

^{13/}

See Affidavit of William J. Mack, president, William J. Mack Company, printing firm, dated January 25, 1974.

^{14/}

The Connecticut Supreme Court does not hear oral argument during July, August and September. Thus, the petitioner could not be heard on his direct appeal until some time during the October 1974 Term of the Connecticut Supreme Court, at the earliest.

P

unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation." Darr v. Burford, 339 U.S. 200, 204 (1950)"

Picard v. Connor, 404 U.S. 270, 275 (1971). As long as the petitioner fairly presents his claims to the state courts, it is of no consequence that the claims are dismissed for failure to comply with state procedural requirements: "The state courts need not have decided the merits of the claims raised by the applicant in the state courts in order for him to be considered to have exhausted his state court remedies." United States ex rel. Meadows v. State of New York, 426 F.2d 1176, 1179 n.1 (2d Cir. 1970), cert. denied 401 U.S. 941 (1971). See Hawkins v. Robinson, 367 F.Supp. 1025, 1029 (D. Conn. 1973). However, the petitioner must have presented to the state courts the same claims which he subsequently urges upon the federal habeas court. Picard v. Connor, supra, 404 U.S. at 276.

It is well established that the exhaustion requirement of 28 U.S.C. § 2254 is not jurisdictional: it does not restrict the power of the federal court to grant relief in appropriate cases. Fay v. Noia, 372 U.S. 391, 420 (1963); United States ex rel. Graham v. Mancusi, 457 F.2d 463, 468 (2d Cir. 1972). Rather, the exhaustion requirement is grounded in flexible considerations of comity, "a doctrine which teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent

powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter," Darr v. Burford, 339 U.S. 200, 204 (1950), quoted in Fay v. Noia, supra, 372 U.S. at 420. Indeed, the broad scope of federal habeas corpus indicates that federal courts must place primary emphasis on the redress of constitutional deprivations rather than on deference to the state judicial machinery: "Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." Fay v. Noia, supra, 372 U.S. at 401-402. As the Supreme Court recently declared, in Hensley v. Municipal Court, 411 U.S. 345, 349-350 (1973):

"While the 'rhetoric celebrating habeas corpus has changed little over the centuries,' it is nevertheless true that the functions of the writ have undergone dramatic change. Our recent decisions have reasoned from the premise that habeas corpus is not 'a static, narrow, formalistic remedy,' Jones v. Cunningham, supra, at 243, but one which must retain the 'ability to cut through barriers of form and procedural mazes.' Harris v. Nelson, 394 U.S. 286, 291 (1969). See Frank v. Mangum, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting). 'The very nature of the writ demands that it be administered with the initiative and flexibility

essential to insure that miscarriages of justice within its reach are surfaced and corrected.' Harris v. Nelson, supra, at 291.

Thus, we have consistently rejected ~~interpretations of the habeas corpus~~ statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements. The demand for speed, flexibility, and simplicity is clearly evident in our decisions concerning the exhaustion doctrine, Fay v. Noia, 372 U.S. 391 (1963); Brown v. Allen, 344 U.S. 443 (1953)" (Footnote omitted).

Thus the exhaustion doctrine "is a judicially crafted instrument which reflects a careful balance between important interests of federalism and the need to preserve the writ of habeas corpus as a 'swift and imperative remedy in all cases of illegal restraint or confinement.'" Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 490 (1973). Accordingly, the Supreme Court has noted that "once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied." Picard v. Connor, supra, 404 U.S. 270, 275 (1971). The exhaustion requirement

" . . . does not erect insuperable or successive barriers to the invocation of federal habeas corpus. [It] is merely an accommodation of our federal system designed to give the State an initial 'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights. Fay v. Noia, 372 U.S. 391, 438 (1963)."

Wilwording v. Swenson, 404 U.S. 249, 250 (1971).

The federal Courts of Appeals have recognized that excessive delays in state court proceedings in which a defendant claims that his conviction was obtained in violation of his constitutional rights may deny the defendant due process

//

of law and justify a federal court in proceeding to the merits of a habeas corpus petition. In the leading case, Smith v. State of Kansas, 356 F.2d 654 (10th Cir. 1966), cert. denied 389 U.S. 871 (1967), the petitioner had pleaded guilty in April, 1964, to state charges of second degree burglary and grand larceny. In September, 1964, claiming that his guilty plea had been coerced, Smith filed a motion for relief under the Kansas post-conviction statute. In March, 1965, the motion was denied. Smith filed a notice of appeal and the trial court appointed the same attorney to represent Smith on his appeal. Smith objected to the appointment of the attorney, and the attorney filed a motion to withdraw. While that motion was under consideration, Smith filed a petition for a writ of habeas corpus in federal district court. The petition was dismissed on the ground that Smith had failed to exhaust his pending state remedy. Smith then appealed the denial of federal habeas corpus, and in December, 1965, while his appeal was pending before the Court of Appeals for the Tenth Circuit, an order was filed in the state court sustaining the trial attorney's motion to withdraw from the post-conviction proceeding and appointing another attorney to represent Smith. At approximately the same time the record on appeal from the state trial court was docketed in the Kansas Supreme Court. Thus, at the time the Court of Appeals for the Tenth Circuit issued its decision, more than one year had elapsed since Smith had filed his motion for post-conviction relief and he

12

had still not been able to present his arguments to the Kansas Supreme Court. Over the objection that Smith had failed to exhaust his pending ~~state-court~~ remedy, the Court of Appeals declared:

"The federal courts have the inescapable duty to entertain a solid claim of an unconstitutional restraint by a state under color of its law, and jurisdiction is not defeated by anything which may occur in the state proceedings. See *Fay v. Noia*, supra, 372 U.S. 426, 83 S.Ct. 822; *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770; *Chase v. Page*, 10 Cir., 343 F.2d 167, 171. Consistently with these inexorable principles we have recognized that inordinate delay in the adjudication of an asserted post-conviction remedy may very well work a denial of due process cognizable in the federal court. See *Kelly v. Crouse*, 10 Cir., 352 F.2d 506."

356 F.2d at 656. The Court of Appeals then reversed and remanded the case to the trial court "with directions to take such steps as it deems necessary to secure petitioner's right to a prompt hearing on his claim of unconstitutional restraint." *Id.* at 657. See also *Jones v. Crouse*, 360 F.2d 157 (10th Cir. 1966) (eighteen-month delay in appeal from denial of motion for post-conviction relief); *Dixon v. State of Florida*, 388 F.2d 424 (5th Cir. 1968) (twenty-month delay in post-conviction proceedings); *St. Jules v. Beto*, 462 F.2d 1365 (5th Cir. 1972) (twenty-seven month delay in state habeas corpus proceedings); *United States ex rel. Senk v. Brierley*, 471 F.2d 657 (3rd Cir. 1973) (three and one-half year delay in post-conviction proceedings). Cf. *Tramel v. Idaho*, 459 F.2d 57 (10th Cir. 1972); *Reynolds v. Wainwright*, 460 F.2d 1026 (5th Cir.), cert. denied 409 U.S. 950 (1972); *Rivera v. Concepcion*, 469 F.2d 17 (1st Cir. 1972). As the court stated in *Dixon v. Florida*, supra,

388 F.2d at 426, "We must ever be sensitive both to the basics and to the nuances of judicial federal-state congruency. The concept of federal-state comity involves mutuality of responsibilities, ~~and an unacted-upon~~ responsibility can relieve one comity partner from continuous deference. Moreover, the wait for action on the writ must not be so exhausting as to frustrate its purpose. Patience is a virtue in the accommodation process of our federalism, but it is not inexhaustible."

The principle is not limited to collateral proceedings in state courts. In Way v. Crouse, 421 F.2d 145, 146-147 (10th Cir. 1970), the court stated:

"Just as a delay in the adjudication of a post-conviction appeal may work a denial of due process, so may a like delay in the determination of a direct appeal. The question presented here is in what court should petitioner seek vindication of his asserted constitutional grievance. In our view, Way properly resorted to the federal court, which should not, without knowing the facts and circumstances of the eighteen-month delay, have required him at this late date to commence a completely new and independent proceeding through the very courts which are responsible, on the face of the pleadings, for the very delay of which he complains."

See also Dozie v. Cady, 430 F.2d 637 (7th Cir. 1970) (seventeen-month delay in direct appeal); Odsen v. Moore, 445 F.2d 806 (1st Cir. 1971) (thirty-four-month delay in direct appeal: "[W]e confess to a sense of the absurd in saying to one who without success has for nearly three years tried to spur both his court-appointed counsel and, apparently, the courts to action, that he must persevere in perpetuity before he can complain of failure to a federal court." 445 F.2d at 807).

14

Where federal courts have determined that the delays experienced by a federal habeas corpus petitioner in the state courts have been excessive and unjustified, they have found the state corrective process "ineffective to protect the rights of the prisoner," 28 U.S.C. § 2254(b), and have proceeded to the merits of the petition. Where they have further found that the petitioner's conviction was obtained in violation of his constitutional rights, they have granted the writ. In United States ex rel. Johnson v. Rundle, 286 F.Supp. 765 (E.D. Pa. 1968), the petitioner had suffered a delay of nineteen months in post-conviction proceedings following a conviction for rape in state court. With respect to the exhaustion doctrine, the court stated:

"Of course, the theoretical premise assumes that the states will allow the individual to present his claims without overly burdensome procedural snarls and to render decisions on them with reasonable dispatch. If the state does not act so, then the effect of the 'exhaustion doctrine' would be 'to shield an invasion of the citizen's constitutional rights.' Jordan v. Hutcheson, 323 F.2d 597, 601 (C.A. 4, 1963)."

286 F.Supp. at 767. The court found that the delay was "so inordinate as to justify our proceeding to consider the merits." Id. Concluding, further, that petitioner's confession had been involuntary and that its introduction into evidence at petitioner's trial had deprived him of due process of law, the court granted the writ of habeas corpus. See also West v. State of Louisiana, 478 F.2d 1026 (5th Cir. 1973) (seven-month delay in state habeas corpus proceedings);

15

Morgan v. State of Tennessee, 298 F.Supp. 581 (E.D. Tenn. 1969) (nineteen-month delay in state post-conviction proceedings). Cf. United States ex rel. Harper v. Rundle, 279 F.Supp. 1013 (E.D. Pa. 1967); United States ex rel. Carter v. Commonwealth, 330 F.Supp. 593 (E.D. Pa. 1971); Allen v. Leeke, 328 F.Supp. 292 (D. S.C. 1971).

These principles have also been applied by federal courts in this Circuit. In United States ex rel. Lusterino v. Dros, 260 F.Supp. 13 (S.D. N.Y. 1966), the petitioner had applied for federal habeas corpus in February, 1965, alleging that unlawfully seized evidence had been used against him, contrary to Mapp v. Ohio, 367 U.S. 643 (1961), and that admissions to a police officer had been improperly introduced into evidence. The district court denied the petition without a hearing on the grounds that there were state remedies available to the petitioner. In March, 1966, "[p]roceeding with the intermittent assistance of unpaid counsel," the petitioner managed to file a state petition for coram nobis. In June, 1966, the state court ruled that the Mapp issue was unavailable for failure to raise it at trial, but that a hearing should be held on the issue of the admissions to the police officer. The hearing was scheduled for September, 1966, but apparently was delayed further. The petitioner again sought federal habeas corpus. The court said:

"The foregoing chronology is enough to demonstrate that this court should move with all reasonable speed to hear at least petitioner's assertions under Mapp v. Ohio. This would be so even if

16

nothing but the passage of time touched the decision of [the federal district court] almost two years ago. For it is clear that there are sharp limits to the sacrifices men must make upon the altar of comity. In cases of much briefer delay, it has been recognized that inordinate delay in the adjudication of an asserted post-conviction remedy may very well work a denial of due process cognizable in the federal court.' Smith v. State of Kansas, 356 F.2d 654, 656 (10th Cir. 1966)."

260 F.Supp. at 15-16. The court ordered that a hearing be held on petitioner's claims within four weeks. In a Supplemental Memorandum and Order, the court noted that on the eve of the scheduled hearing, the state had conceded the validity of petitioner's claims under Mapp v. Ohio. The court thereupon granted the writ, noting that "[p]roperly administered, the rule barring federal habeas corpus until adequate state remedies have been exhausted implements cherished values of our federal system. The rule withers to a grisly ritual when it is employed for nothing more than delay in the vindication of constitutional rights." Id. at 17. See also United States ex rel. Graham v. Mancusi, supra. Cf. United States ex rel. Williams v. LaVallee, 487 F.2d 1006, 1015 n.18 (2d Cir. 1973); United States ex rel. Hill v. Deegan, 268 F.Supp. 580 (S.D. N.Y. 1967); United States ex rel. Goodman v. Kehl, 456 F.2d 863 (2d Cir. 1972).

C. The Delay In The Instant Case

Whether the delay in the direct appeal in any particular case has been excessive and unjustified will depend, of course, upon the specific circumstances presented. On their face the

Connecticut appellate procedures do not appear to provide for an inordinately lengthy process. An appeal must be filed within twenty days from the date of judgment, which in a criminal case is the date sentence is pronounced in open court.^{15/} The party appealing must file with his appeal a request for a finding and a draft finding containing a statement of what each party offered evidence to prove, the questions of law and, to test rulings on evidence, the specific portion of the trial record which disclosed the context in which the ruling was made.^{16/} Ten days after the request for finding and draft finding are filed, the appellee must file a draft counterfinding.^{17/} Both the draft finding and the draft counterfinding must make appropriate references to the pages of the transcript of the trial.^{18/} Thereafter the trial court must file its finding within two weeks, "unless it is unable to do so, in which case it shall file it at the earliest practicable time."^{19/} Corrections to the court's finding must be filed "as soon as practicable."^{20/} Within ten days from

^{15/} Connecticut Practice Book § 601.

^{16/} Connecticut Practice Book §§ 613, 614, 629, 630.

^{17/} Connecticut Practice Book §§ 615, 631.

^{18/} Connecticut Practice Book §§ 613, 614, 615, 629, 630, 631, 641.

^{19/} Connecticut Practice Book §§ 618, 634.

^{20/} Connecticut Practice Book §§ 626, 636.

the filing of the finding, the appellant must file his assignments of error.^{21/} When the assignments of error are filed, the record of the case is complete and is docketed with the Connecticut Supreme Court.^{22/} The appellant must then file his brief within forty-five days, the appellee's brief is due thirty days thereafter, and a reply brief may be filed within the next twenty days.^{23/} Thus, if all of these steps are taken in time, one hundred forty-nine days are allotted to counsel for preparation of the record and briefs. After the briefs are filed, the case is assigned for oral argument.^{24/}

While the appellate procedures theoretically provide for a final determination of a direct appeal within approximately six months, the procedure apparently works very differently in practice. The petitioner has submitted statistical tables representing the timetable of review of the seventy criminal appeals decided by the Connecticut Supreme Court between November 4, 1970, and December 18, 1973. The tables are not controverted or challenged by the state. The data

^{21/} Connecticut Practice Book § 612.

^{22/} Connecticut Practice Book § 683.

^{23/} Connecticut Practice Book § 724.

^{24/} Connecticut Practice Book § 711.

indicate that during the three years covered by the tables, no criminal appeal taken by a defendant has received final determination by the ~~Connecticut~~ Supreme Court in less than thirteen months after a notice of appeal was filed.^{25/} Moreover, less than ten per cent of the criminal appeals by defendants decided during the three-year period were decided in less than eighteen months.^{26/} Slightly more than half the appeals were decided in eighteen to thirty months, and almost forty per cent of the appeals were pending more than thirty months before final decision.^{27/} The average length of time for a criminal appeal by a defendant was approximately thirty months.^{28/} By contrast, the average time for adjudication of an appeal in New Jersey during 1971-72 was 15.3 months.^{29/} In the federal system, during fiscal year 1973, the average time for an appeal from filing of notice of appeal in the lower court to final disposition was 8.8 months; in the Second Circuit, 6.1 months; in the District of Columbia Circuit,

^{25/} See Table I to Petitioner's Brief.

^{26/} See Appendix B to Table I to Petitioner's Brief.

^{27/} Id.

^{28/} See Table I to Petitioner's Brief.

^{29/} Annual Report of the Administrative Director of the Courts of the State of New Jersey, pp. 8-9 (1973).

which had the longest period for processing of appeals, 13.5 months.^{30/}

The affidavits and statistical material submitted by the petitioner indicate some of the factors contributing to the extraordinary delays experienced by criminal defendants in

^{30/}

The amount of time required for the processing of an appeal in the federal system may be seen from the following table:

<u>Circuit</u>	<u>Filing of Notice of Appeal in Lower Court to Filing of Complete Record in App. Court*</u>	<u>Filing Com- plete Record to Disposition**</u>	<u>Total</u>
D.C.	1.8	11.7	13.5
1	0.2	5.1	5.3
2	1.3	4.8	6.1
3	1.3	8.9	10.2
4	1.4	5.8	7.2
5	1.5	4.9	6.4
6	2.7	7.0	9.7
7	2.3	11.1	13.4
8	2.5	4.5	7.0
9	2.3	7.3	9.6
10	<u>2.3</u>	<u>6.3</u>	<u>8.6</u>
Average	1.8	7.0	8.8

*Administrative Office of the United States Court, Annual Report of the Director 1973, at p. A-7, Table B5.

**Administrative Office of the United States Courts, Management Statistics for United States Courts 1973, at p. f.

- 18 -

the Connecticut appellate process. Court reporters are scheduled to work in the state courts from 10:00 a.m. to 5:00 p.m. Tuesday through Friday. Preparation of transcripts must therefore be done at night, on weekends, or on Mondays. As a consequence, trial transcripts, which must be completed before draft findings and draft counterfindings can be submitted, regularly take several months to complete.^{31/} There are further delays of several months while the draft findings are being drawn up by attorneys for the appellants.^{32/} Once the draft findings are filed, there are generally further delays of several months before the State's Attorneys prepare and file their draft counterfindings. Then the trial judges must find time amid the welter of ongoing court business to draw up their findings in all of their cases being appealed.^{33/}

^{31/}

Affidavit of Joan E. Pagliuco, supra note 2.

^{32/}

The petitioner's statistics indicate that in approximately 28% of the criminal appeals, draft findings were filed up to two months after notice of appeal was filed; in almost 38% of the appeals, draft findings were filed between three and seven months after notice of appeal was filed; in the remainder of the appeals, one third of the total number of appeals, draft findings were filed eight months or more after notice of appeal was filed. See Table V to Petitioner's Brief. Former Chief Justice Maltbie states that the granting of extensions of time for the filing of requests for findings and draft findings is "the general rule." Maltbie, Appellate Procedure in the Supreme Court of Errors of Connecticut 156 (2d ed. 1957).

^{33/}

The Petitioner's statistics indicate that in less than 22% of the criminal appeals, findings were filed up to two months after the draft findings were filed; in half of the appeals, findings were filed three to seven months after the draft findings were filed; in the remaining 28% of the appeals, findings were filed eight months or more after the draft findings were filed. See Table VI to Petitioner's Brief.

Apparently Connecticut is the only jurisdiction in the nation to require this time-consuming preparation of a finding.^{34/}

The delay suffered by the petitioner in this case is not extraordinary. That does not make it any more justifiable. It is evident from the foregoing that criminal defendants appealing their convictions in the courts of Connecticut experience, as a rule, very lengthy delays in the appellate

^{34/}
Petitioner's Brief, p. 6; Table IV to Petitioner's Brief.

The "finding" does not have any intrinsic value. If the purpose of the finding is specification of the issues raised on appeal, see Maltbie, supra note 32, at 157, there is no reason why that purpose cannot be adequately served by the procedure utilized in other jurisdictions involving submission of briefs by the parties along with a stipulated record consisting of those portions of the record below which reveal the exact situation in which the issue being appealed arose and was ruled upon. The transcript of what occurred upon the trial is the underlying and basic record in any event. Whenever a "finding" is challenged the court is required to go to that record anyway.

The Connecticut judiciary apparently has its own doubts as to the utility of the "finding" in the state appellate process. In recently proposed changes to the appellate rules, the number of situations in which a finding will be required may be substantially reduced. The proposed rules provide that in a jury case there will be no finding, nor will an appendix be required, except under the following circumstances:

"If in the course of a case tried to the jury an issue is presented which requires a decision by the trial judge, a party adversely affected by any such decision may request a finding of fact as to that issue for appeal in accordance with the procedure for an appeal in a court case."

"Proposed Changes in Appellate Rules: Appeals in Jury Cases," 35 Conn. L.J. 2B (November 13, 1973). This is apparently designed to cover a situation where something relevant to a case occurred de hors the record, e.g., outside communication with a juror during the course of a trial. See generally, Clark, Judicial Reform in Connecticut, 5 Conn. L. Rev. 1 (1972).

process. The preparation of the record by counsel and the trial court, which the rules contemplate shall be completed in fifty-four days, generally takes four to six times that amount of time. And, regrettably, this processing of a record by proliferating a finding into it does not serve its vaunted purpose of framing the issues more correctly. See note 34, supra. In actual operation the "finding" is redundant. Indeed, the data indicate that a state prisoner sentenced to a relatively short prison term is effectively deprived of any direct appeal whatsoever, since he will very likely complete his sentence before his case is reviewed.^{35/}

The three and one-half year period during which the direct appeal in the instant case has been pending, although somewhat longer than the average, is by no means unique among Connecticut cases. Nevertheless, this delay in adjudicating the petitioner's rights is clearly inordinate and excessive: it certainly offends the "limits to the sacrifices men must make upon the altar of comity." United States ex rel. Lusterino v. Dros, supra, 260 F.Supp. at 16. As the United

^{35/}

The United States Supreme Court has taken note of such a situation:

"Arguably . . . if the prisoner could make out a showing that, because of the time factor, his otherwise adequate state remedy would be inadequate, a federal court might entertain his habeas corpus application immediately, under § 2254(b)'s language relating to 'the existence of circumstances rendering such [state] process ineffective to protect the right of the prisoner.' But we need not reach that issue here."

Preiser v. Rodriguez, 411 U.S. 475, 497 (1973).

States Supreme Court declared in Bartone v. United States, 375 U.S. 52, 54 (1963), "Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, federal courts have no other choice but to grant relief in the collateral proceedings." Cf. Hunt v. Warden, Maryland Penitentiary, 335 F.2d 936, 940-941 (4th Cir. 1964).

The state argues that this Court should not proceed to the merits of petitioner's claims because he has other available state remedies, i.e., state habeas corpus, Conn. Gen. Stats. § 52-466, and motion to set aside the judgment for lack of diligence in defending the appeal, Connecticut Practice Book § 696.

The petitioner is not required, as a matter of law, to seek collateral state remedies while his direct appeal is pending. As noted above, "once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied." Picard v. Connor, supra, 404 U.S. 270, 275 (1971). The Supreme Court stated in Wilwording v. Swenson, supra, 404 U.S. 250:

"Petitioners are not required to file 'repetitious applications' in the state courts. Brown v. Allen, 344 U.S. 443, 449 n.3 (1953). Nor does the mere possibility of success in additional proceedings bar federal relief. Roberts v. LaVallee, 389 U.S. 40, 42-43 (1967); Coleman v. Maxwell, 351 F.2d 285, 286 (CA6 1965).

And our own Court of Appeals has held, "Under the traditional concepts of exhaustion only one opportunity through proper channels need be afforded a state to pass upon a question

25

before the [federal] habeas court should look at the merits." United States ex rel. Weinstein v. Fay, 333 F.2d 815, 819 (2d Cir. 1964). Having fairly presented his claims to the state courts by taking the route of a direct appeal, petitioner was not required to pursue alternate state avenues of relief at the same time.

Moreover, the collateral remedies cited by the state appear to be illusory. While some forms of relief may be available to a defendant while his direct appeal is pending,^{36/} the clear rule in Connecticut is that state habeas corpus "cannot be utilized as a substitute for an appeal of the original action, or for a writ of error, or for a petition for a new trial. In re Bion, 59 Conn. 372, 386, 20 A. 662. It may not be employed to review irregularities or errors of procedure or questions as to the sufficiency of evidence. Perell v. Warden, 113 Conn. 339, 342, 155 A. 221" Wojculewicz v. Cummings, 143 Conn. 624, 628 (1956). See United States ex rel. DeNegris v. Menser, 247 F.Supp. 826, 829 (D. Conn. 1965), aff'd 360 F.2d 199 (2d Cir. 1966). An exception has been carved out of this rule for prisoners presenting federal

^{36/}
A state prisoner may petition for a new trial on the ground of newly discovered evidence, Conn. Gen. Stats. § 52-270, while his direct appeal is pending. Dortch v. State, 142 Conn. 18 (1954). The petition for a new trial is not available to petitioner in the instant case: he does not claim to have found new evidence, and in any event petitions for a new trial must be brought within three years of the date of the judgment complained of, Conn. Gen. Stats. § 52-582.

constitutional claims who have not taken a direct appeal.

"We hold, therefore, that a petitioner may collaterally raise federal constitutional claims in a habeas corpus proceeding even though he has failed to appeal his federal constitutional claims directly to us if he alleges and proves, by a fair preponderance of the evidence, facts which will establish that he did not deliberately bypass the orderly procedure of a direct appeal."

Vena v. Warden, 154 Conn. 363, 366-367 (1966) (emphasis added).

Since petitioner's direct appeal is still pending, it is evident that state habeas corpus would not lie. Because petitioner has presented his claims on direct appeal, the Vena doctrine is not applicable to his case.

The motion to set aside the judgment under § 696 of the Practice Book may be granted "[i]f a party shall fail to defend against an appeal or writ of error with proper diligence. . . ." Theoretically the motion might be used by a defendant whose direct appeal was being delayed, or ignored, by the state. In practice, however, the motion has rarely been granted on behalf of a defendant in a criminal appeal:^{37/} there do not appear to be any reported decisions in which it has been granted to set aside the judgment of a defendant convicted in Superior Court. Furthermore, the only grounds upon which the petitioner could claim lack of diligence on the part of

^{37/}

A survey of the reported cases reveals only two instances in which the motion has been granted against the state, State v. Fenster, 151 Conn. 729 (1963), and State v. Stanley, 157 Conn. 625 (1969), but in both of these cases the appeals were from the Circuit Court and the judgments had been affirmed by the Appellate Division of the Circuit Court.

the state would be in regard to the eleven extensions of time moved for and received by the State's Attorney for the filing of the counterfinding, ~~which~~ extended the appeal from January 3, 1972, to January 5, 1973. The extensions of time, which may be granted under § 665 of the Practice Book "for good cause shown," were all ordered by the trial judge.^{38/} In State v. Ward, 134 Conn. 81 (1947), where the trial court had granted several extensions of time for the filing of the requests for findings, the counterfinding, and the assignments of error, the Connecticut Supreme Court stated:

"The various extensions of time granted by the trial court for filing appeal papers were made under provisions of the rules of court authorizing such action 'for good cause shown.' We must, in considering this motion, regard the extensions as properly granted, and as all papers were filed within the times fixed in them we cannot consider the failure by the defendants to file them earlier in determining whether they have prosecuted the appeals with reasonable diligence."

^{38/}

Petitioner's appellate counsel did not object to these extensions because the State's Attorney on the case had complained "that he was overworked, that he was receiving insufficient help, that he was then working nights and taking work home on weekends." Moreover, the appellate counsel had several times objected to the granting of extensions of time in Connecticut appeals, and "these motions for time extensions had nevertheless been summarily granted. Thus [he] felt that such opposition would be futile, and would serve no purpose other than to irritate [the State's Attorney] who could not, without additional assistance, move the case along more quickly." Affidavit of John R. Williams, counsel for John Wesley Ralls in his appeal to the Connecticut Supreme Court, dated January 25, 1974. In view of "the general rule" allowing extensions of time, see note 30 supra, it is highly unlikely that objections to the granting of extensions of time for filing papers would have been sustained.

28

134 Conn. at 83-84 (emphasis added). Certainly a habeas corpus petitioner cannot be required to pursue state remedies where such efforts will be futile. United States ex rel. Hughes v. McMann, 405 F.2d 773, 775-776 (2d Cir. 1968); Perry v. Blackledge, 453 F.2d 856, 857 (4th Cir. 1971), cert. granted 42 U.S.L.W. 3226 (Oct. 15, 1973). Cf. Roberts v. LaVallee, 389 U.S. 40, 42-43 (1967).^{39/}

Finally, the fact that the petitioner's appellate counsel did not object to the extensions of time requested by the State's Attorney between January 3, 1972, and January 5, 1973,^{40/} does not vitiate the delay experienced by the

^{39/}

The state relies upon Roberson v. Robinson, Civil No. H-180 (D. Conn. November 9, 1973), for the proposition that § 696 of the Practice Book is an adequate state remedy available to the petitioner. In Roberson the petitioner sought federal habeas corpus, claiming that his direct appeals from his two state court convictions had been pending more than two years and that the state had not yet even filed counterfindings in the cases. Judge Clarie dismissed the petition for failure to exhaust state remedies, noting that "Section 696 of the Connecticut Practice Book provides the petitioner with a plain, speedy, and efficient state court remedy." Id. at p. 7. When Roberson returned to the Connecticut Supreme Court and filed a motion to set aside the judgment pursuant to § 696 of the Practice Book, Judge Clarie's faith in the Connecticut appellate process was unfulfilled. At oral argument on the motion on January 2, 1974, the State's Attorney stated that the counterfinding on the first conviction was being typed and would be filed within a few days. He also stated that the counterfinding on the second conviction was far from completion. Affidavit of John R. Williams, appellate counsel for Jasper Roberson, dated April 5, 1974. The Connecticut Supreme Court granted the motion as to the first conviction unless the state filed its counter-finding on or before January 22, 1974, and denied the motion as to the second conviction. State v. Roberson (Conn. Sup. Ct. January 2, 1974), 35 Conn. L.J. 8 (January 15, 1974).

^{40/}

See note 39 supra.

petitioner. The petitioner contends that he was unaware of such extensions of time and that he would have objected had he been aware of them: ^{41/} at any rate, in the absence of purposeful procrastination on the part of the petitioner and his attorney, dilatoriness of petitioner's counsel in his direct appeal will not preclude the federal court from considering the merits of a habeas corpus petition, Odsen v. Moore, supra, any more than will delay in the availability of the trial transcript, United States ex rel. Johnson v. Rundle, supra, 286 F.Supp. at 768, or delay occasioned by withdrawal of a defendant's original appellate attorney, Smith v. State of Kansas, supra, 356 F.2d at 656, or delay resulting from the presence of other cases on the docket of the appellate court, Morgan v. State of Tennessee, supra, 298 F.Supp. at 583. As the court said in United States ex rel. Johnson v. Rundle, supra, regarding the unavailability of the trial transcript for approximately ten months: "This does not excuse the state's delay. It merely shifts the onus from the state judiciary to another arm of the state. And it is the entire state system that we look to in determining whether there has been inordinate delay." 286 F.Supp. at 768.

In view of the foregoing, it is evident that the state court remedies are "ineffective to protect the rights of the [petitioner]," 28 U.S.C. § 2254(b), and that this Court should

^{41/}

Affidavit of John Wesley Ralls, dated January 23, 1974.

30

proceed to a consideration of the merits of his petition. To do otherwise "might well invite the reproach that it is the prisoner rather than the state remedy that is being exhausted," United States ex rel. Kling v. LaVallee, 306 F.2d 199, 203 (2d Cir. 1962) (concurring opinion), quoted in United States ex rel. Graham v. Mancusi, supra, 457 F.2d at 467, and in United States ex rel. Williams v. LaVallee, supra, 487 F.2d at 1015 n.18. This determination to proceed to the merits of the petition does not reward dilatoriness of counsel or offer the federal habeas courts as a substitute for the Connecticut direct appeal process. The petitioner has languished in prison for almost three and one-half years without having his claims ruled upon by any court, and the end, in the state courts, is not yet in sight: there is no indication whatsoever in the record that his appellate counsel has sought delay for its own sake or that petitioner has simply sought to circumvent the state appellate process. Compare United States ex rel. Wilson v. Rowe, 454 F.2d 585 (7th Cir. 1971), cert. denied 406 U.S. 909 (1972). It is evident that substantial numbers of Connecticut defendants are experiencing protracted delays in the direct appeals of their state convictions. The state has important interests at stake in the exhaustion doctrine,^{42/}

^{42/}

"As applied in our earlier decisions, the doctrine

'preserves the role of the state courts in the application and enforcement of federal law. Early federal intervention

but these interests are ill-served when they are vindicated at the expense of the rights of individuals. Each petition for a writ of habeas corpus must of course be reviewed independently by the federal district court. "Delay that would be 'inordinate' in Kansas may be reasonable and unavoidable in Philadelphia." United States ex rel. O'Halloran v. Rundle, 260 F.Supp. 840 (E.D. Pa. 1966). If a substantial period of time has elapsed since the notice of appeal was filed and the Connecticut Supreme Court has not rendered a decision in the petitioner's case, a number of factors must be assessed in order to determine whether the delay in the particular case has been excessive and unjustified, including: the length of the trial and of the trial transcript, delays in completion of the transcript, the number and complexity of the issues

42/ continued

in state criminal proceedings would tend to remove federal questions from the state courts, isolate those courts from constitutional issues, and thereby remove their understanding of and hospitality to federally protected interests. Second, [the doctrine] preserves orderly administration of state judicial business, preventing the interruption of state adjudication by federal habeas proceedings. It is important that petitioners reach state appellate courts, which can develop and correct errors of state and federal law and most effectively supervise and impose uniformity on trial courts.'

Note, Developments in the Law--Federal Habeas Corpus, 83 Harv L Rev 1038, 1094 (1970)."

Braden v. 30th Judicial Circuit Court of Kentucky, supra, 410 U.S. at 490-491.

raised on appeal by the defendant, the number and length of extensions of time granted to the defendant's counsel or to the State's Attorney for the filing of appeals papers, and the failure of the defendant's counsel or the State's Attorney to process the appeal with due diligence. While the court must weigh each of these factors as appropriate, it is expected that federal habeas petitions evidencing state appellate delays of eighteen months or more without a final determination by the Connecticut Supreme Court will be reviewed with particular scrutiny in order to insure that the rights of state defendants in criminal appeals are not unconstitutionally impaired. United States ex rel. Lusterino v. Dros, supra; United States ex rel. Johnson v. Rundle, supra; Way v. Crouse, supra; Dozie v. Cady, supra. See Note, Developments in the Law--Federal Habeas Corpus, 83 Harvard L. Rev. 1038, 1098 (1970). To the extent that this policy heightens the responsibility of state trial judges to be less disposed to grant numerous extensions of time to attorneys for the filing of appeals papers, and sharpens the responsibility of appellate counsel and State's Attorneys to treat criminal appeals with dispatch, the interests of justice will be that much better served. Implementation of the proposed changes in the Connecticut appellate rules,^{43/} reducing the time-consuming preparation of the "finding," may go a long way toward remedying a situation which is at best depressing and at worst intolerable.

^{43/}

See note 34, supra.

II. PETITIONER'S SUBSTANTIVE CLAIMS

The petitioner claims that his constitutional rights were denied at his trial in several respects: (1) that the jury was improperly informed of his prior arrests; (2) that the trial judge's instructions to the jury applied improper pressure on the jury to agree to a verdict; (3) that statements made by the petitioner at the time of his arrest were improperly admitted for consideration by the jury; (4) that he was denied effective assistance of counsel before and during his trial; and (5) that unconsented-to substitution of defense counsel during the jury deliberations and the rendering of the verdict denied him the effective assistance of counsel. Because of the Court's conclusions regarding the first two claims urged by the petitioner, it is unnecessary to consider the remaining claims.^{44/}

A. Evidence Of Petitioner's Prior Arrests

During the state's case in chief, while the State's Attorney was conducting his direct examination of Sergeant James E. McDonald of the Connecticut State Police Department Bureau of Identification, the following occurred:

^{44/}

The parties agreed to dispense with the taking of oral evidence at a hearing and instead to submit this case for decision upon the pleadings, briefs, stipulations, affidavits, and exhibits submitted by counsel. These materials were to be submitted in accordance with a schedule contained in an Order of this Court dated January 11, 1974. The parties subsequently

44/ continued

agreed to extend this schedule by two weeks. The petitioner submitted an extensive brief covering the exhaustion question and the issues on the merits. However, after obtaining an additional extension of time for the filing of its brief "due to the complexity of the issues involved," the respondent has limited its arguments to the issue of exhaustion of state remedies and has "respectfully declined" to discuss the substantive constitutional issues raised by the petition. Respondent's claim that the issues "should remain before the Connecticut Supreme Court" notwithstanding, this Court would clearly not be justified in acceding to still more delay in the consideration of petitioner's claim, and therefore it now proceeds to the substantive issues.

- 31 -

Q Showing you this fingerprint card, Sergeant, can you tell me whose fingerprint card that is?

A This is a fingerprint card of John Ralls, which was ~~on file~~ at the Bureau of Identification, also C.S.P.I. 227299.

Q What is the C.S.P. number?

A It is a central bureau for all the criminal arrest records in the State of Connecticut.

Q All right. ^{45/}

At that point the trial judge spoke to the jury regarding Sgt. McDonald's testimony:

THE COURT: Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It doesn't affect this case, nor is it introduced for that purpose. ^{46/}

The defendant's counsel then asked that the jury be excused, and in the absence of the jury requested a mistrial. The trial judge denied the motion, stating:

As I say, I think I could duly caution the jury on it. I don't feel it is grounds enough for me, at this point, to declare a mistrial, but I think it is dangerously real close to it. ^{47/}

When the members of the jury returned, the trial judge again

^{45/}
Transcript, p. 82.

^{46/}
Id.

^{47/}
Transcript, p. 83.

spoke to them about Sgt. McDonald's testimony:

I want to caution the jury again, that I don't know what the extent it covers, whether it might have ~~been an application~~ for employment. You are not to give it any more weight than that. This man is being tried here on this case only. 48/

The fingerprint card was then marked and received into evidence as a State's exhibit.

It is evident that, as a result of this exchange, the fact that the petitioner had a record of prior arrests was before the jury. If there was any doubt in the mind of any member of the jury as to the petitioner's prior record, it was certainly dispelled by the fingerprint card itself. On the front side of the card the name, race, and sex of the petitioner are listed and the petitioner's fingerprints and signature appear. On the reverse side of the card, a white sheet of paper covered the central area, but three printed items were apparent. At the top left corner of the card was the following: "Connecticut State Police, Hartford 1, Conn." At the top right corner of the card appeared, "STATE BUREAU of IDENTIFICATION." At the bottom of the card, just below the white sheet covering the central portion of the card, was the statement, "Please furnish all additional criminal history and police record on separate sheet."^{49/} The jury was surely

48/
Transcript, p. 84.

49/
Exhibit 1 to Petitioner's Brief (emphasis added).

led to the conclusion that the white sheet over the central portion of the card covered entries indicating petitioner's "criminal history and police record." The petitioner did not testify at the trial, ~~nor did he~~ otherwise put his character in evidence.

The courts have long recognized that proof of other crimes committed by a defendant may prejudice the defendant with the members of the jury and deny him a fair trial. As the Supreme Court stated more than eighty years ago:

"Proof of [other crimes committed by the defendants] only tended to prejudice the defendants with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no real value to the community, and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving punishment of death."

Boyd v. United States, 142 U.S. 450, 458 (1892). In Michelson v. United States, 335 U.S. 469 (1948), the Court made it clear that unless the defendant himself opens up the issue of his character, the prosecution is absolutely prohibited from introducing any evidence on the subject. Thus, as a general rule, the law

"simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to

prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice."

Id. at 475-476 (footnotes omitted).

The Court of Appeals for the Second Circuit has recently had occasion to discuss this issue in a case very similar to the instant case. In United States v. Harrington, 490 F.2d 487 (2d Cir. 1973), the prosecution had attempted to bolster the testimony of a government witness who had failed to make an in-court identification of the defendant by having the witness duplicate, before the jury, an identification from "mug shot" photographs which he had previously made out of court. After objection by counsel for the defendant, and an ordered alteration of the photographs by the trial judge, all in full view of the jury, the photographs were admitted into evidence.

The Court of Appeals succinctly summarized the issues and the applicable law:

"An examination of the issue proceeds from the recognition of a basic tenet of our criminal law. If, at his trial, a defendant does not take the witness stand in his own defense, or if he has not himself been responsible for causing the jury to be informed about his previous convictions, he is entitled to have the existence of any prior criminal record concealed from the jury. The defendant's right to this protection is so well understood that discussion of it is unnecessary. However, this protection may be lost by unexpected trial occurrences such as occurred here when the prosecution sought to salvage an identification by confronting its witness with appellant's photographs. That the introduction of photographs of

a defendant may well be equivalent to the introduction of direct evidence of a prior criminal conviction has been articulated in a number of recent opinions which have recognized that the introduction of certain photographs may result in getting before the jury the fact that the defendant has a prior record, and so has deprived the defendant of his right to a fair trial."

490 F.2d at 490. Relying primarily upon Reed v. United States, 376 F.2d 226 (7th Cir. 1967), United States v. Harman, 349 F.2d 316 (4th Cir. 1965), and Barnes v. United States, 365 F.2d 509 (D.C. Cir. 1966), the court specified three conditions which must exist if the introduction of "mug shot" type photographs is not to deny a defendant a fair trial:

- "1. The Government must have a demonstrable need to introduce the photographs; and
2. The photographs themselves, if shown to the jury, must not imply that the defendant has a prior criminal record; and
3. The manner of introduction at trial must be such that it does not draw particular attention to the source or implications of the photographs."

United States v. Harrington, supra, 490 F.2d at 494. Looking at the facts of the case before it, the court concluded that the failure of the government witness to make the in-court identification provided a "demonstrable need" to introduce the photographs. With respect to the second condition, the court stated:

"In this regard, it is helpful to recall Judge Leventhal's discussion in Barnes that the 'double-shot' picture produces a 'natural, perhaps automatic' inference of prior encounters with the police and that crude and inartful masking of these pictures heightens, rather than diminishes, their significance to the jury. 365 F.2d at 510-511. The photographs herein were

40

'masked,' but in a grossly incompetent fashion. Without basing our resolution of appellant's 'mug shot' contention on the second element of the test we propose, we think that the preferable course of action when mug shots are to be introduced would be to produce photographic duplicates of the mug shots. These copies would lack any incriminating indicia--i.e., inscriptions or identification numbers, and they could also avoid use of the juxtaposed full face and profile photographic display normally associated with 'mug shots.'"

490 F.2d at 495. Finally, the court noted that the entire discussion regarding the photographs took place in full view of the jury, and that when the trial judge ordered the court clerk to mask the pictures, "the jury's attention by this time was undoubtedly riveted on them." Id. (footnote omitted). The court therefore concluded that the defendant had been denied a fair trial and reversed and remanded for a new trial.

It is irrelevant, of course, whether the jury is led to believe that the defendant has a prior arrest record by the improper introduction of "mug shot" photographs or of a State Police Bureau of Identification fingerprint card. Applying the three conditions governing the introduction of such items set forth in Harrington, it is evident at the outset that there was no "demonstrable need" for the introduction of the Bureau of Identification fingerprint card in the condition and manner in which it was introduced at the trial. If the State was seeking to show that latent prints found during the course of police investigation in the case compared favorably with those of the defendant, it could easily have had the defendant's fingerprints taken on a plain white sheet

of paper. If the State was seeking to demonstrate that Sergeant McDonald had himself compared the latent prints with those of the petitioner on the Bureau of Identification card,^{50/} it was obligated to cover the entire card or to make duplicates of the petitioner's fingerprints, as suggested in Harrington, supra, 490 F.2d at 495, and to insure that its direct examination of its own witness would not indicate that the defendant had a prior arrest record. There were no circumstances at the trial similar to the failure of identification by the government witness which occurred in Harrington.

With respect to the second condition noted in Harrington, it is clear beyond doubt that the fingerprint card implied that the defendant had a prior criminal record. Both the testimony of Sergeant McDonald regarding the "C.S.P. number," and the printed material on the reverse side of the card indicated ineluctably that the defendant had a prior arrest record. Finally, with respect to the third Harrington condition, the manner in which the fingerprint card was introduced at trial drew even more attention to the implications of the card than had the introduction of the photographs in Harrington. At the petitioner's trial the judge's first cautionary instruction to the jury emphasized that the defendant had a prior record, "whatever it was" and despite the fact that "it might have been just a minor matter." When

^{50/} Transcript, p. 83.

the defendant's counsel then asked that the jury be excused, the issue of the prior record became even more prominent. Finally, the trial judge emphasized the prior record again by giving the jury a second cautionary instruction. It would strain credulity to the breaking point to believe that the judge's weak and belated disclaimer, "I don't know what the extent it covers, whether it might have been an application for employment," had any real effect on the jury's perceptions. "The naive assumption that prejudicial effects can be overcome by instructions to the jury . . ., all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 336 U.S. 440, 453 (1949) (Jackson, J., concurring).

The cases relied upon by the Court of Appeals in Harrington support the conclusion that the petitioner in the instant case was denied a fair trial. In Barnes v. United States, supra, the government introduced two photographs of the defendant in an attempt to bolster the testimony of one of its witnesses. The first photograph was a "full-length snapshot of an ordinary nature," but the second was "a typical 'mug shot' from a police department 'rogues gallery.'" 365 F.2d at 510. The numbers on the mug shot were covered with adhesive tape and the writing on the back was covered by paper. The defendant's counsel objected to the introduction of the pictures, and, although he allowed the pictures to be admitted, the trial judge told the jury that he was reluctant to allow them to take the pictures into the jury room for fear

that one of them might inadvertently remove the paper covering on the back of the mug shot. The Court of Appeals stated, "It is well-settled law that the criminal record of a defendant may not be introduced ~~into~~ evidence at trial unless the defendant takes the stand or otherwise places his character in issue. A photograph which on its face reveals the existence of such a criminal record is likewise inadmissible when the defendant's character has not been placed in issue." Id. at 510 (footnotes omitted). As the court in Harrington noted, Barnes apparently turned on two considerations: that the introduction of the mug shot was unnecessary, in view of the introduction of the "snapshot of ordinary nature," and that the method of introduction of the photograph and the coverings on the mug shot itself emphasized the implications of the photograph:

"The rudimentary tape cover placed over the prison numbers on the photograph, and over the notations on the reverse side, neither disguised the nature of the picture nor avoided the prejudice. If anything, by emphasizing that something was being hidden, the steps taken here to disguise the nature of the picture may well have heightened the importance of the picture and the prejudice in the minds of the jury."

Id. at 511.

Similarly, in United States v. Harman, supra, where unaltered mug shots were introduced at trial, the court stated:

"Since Harman did not testify or put his character in issue, of course, any evidence of a previous conviction would have been inadmissible. This case does not come within any exception to this general rule. Particularly in whiskey cases,

44

evidence of previous convictions is highly detrimental to a defendant's chances of acquittal. This is especially true when the defendant does not testify. In this case, as to defendant's failure to testify, the District Judge charged the jury fully and fairly. It is doubtful that anything the judge might have said could have removed the prejudice created by the introduction of these pictures, but in his charge, the District Judge did not mention them at all. It is our conclusion that the introduction of these pictures in evidence was error, constituted serious prejudice to the cause of the defendant, and thus deprived him of a fair trial."

349 F.2d at 320. And in United States v. Reed, supra, the court held that testimony regarding a "mug shot" of the defendant, i.e., "[a photograph] of [a former inmate] of the state prison," 376 F.2d at 227,

"... vitiated his right to be presumed innocent until proven guilty and was prejudicial error. Repeated objections to this testimony were sustained, but the testimony remained. This testimony made the difference between the trial of a man presumptively innocent of any criminal wrongdoing and the trial of a known convict. His right not to take the stand in his own defense was substantially destroyed. His past record could not have been directly shown by the prosecution as part of its case to prove bad character since Reed's character was not in issue. The testimony did this indirectly.

Id. at 228. See also United States v. Dressler, 112 F.2d 972 (7th Cir. 1940); Leigh v. United States, 308 F.2d 345 (D.C. Cir. 1962). Petitioner's case is clearly distinguishable from those in which the issue of the defendant's prior criminal record was opened up or used by the defendant himself, United States v. Frascione, 299 F.2d 824, 828-829 (2d Cir.), cert. denied 370 U.S. 910 (1962); United States v. Silvers, 374 F.2d

828 (7th Cir.), cert denied 389 U.S. 888 (1967); United States v. Gimelstob, 475 F.2d 157, 161-162 (3rd Cir.), cert. denied 42 U.S.L.W. 3195 (Oct. 9, 1973), and those in which items introduced for identification purposes did not disclose the defendant's prior record or were unlikely to prejudice the defendant in the eyes of the jury, Sibley v. United States, 344 F.2d 103, 105 (5th Cir.), cert. denied 382 U.S. 945 (1965); Cupo v. United States, 359 F.2d 990, 994 (D.C. Cir. 1966), cert. denied 385 U.S. 1013 (1967); United States v. Calarco, 424 F.2d 657, 660-661 (2d Cir.), cert. denied 400 U.S. 824 (1970); United States v. Jones, 477 F.2d 1213, 1219-1220 (D.C. Cir. 1973). Cf. United States v. Miller, 381 F.2d 529, 536-537 (2d Cir. 1967), cert. denied, 392 U.S. 929 (1968).

In light of the foregoing, it is evident that in the instant case the testimony by Sergeant McDonald regarding petitioner's fingerprint card, the two instructions by the trial judge to the jury, and the card itself, which was introduced into evidence, did not conceal the existence of any prior criminal record of the defendant, but in fact repeatedly called the jury's attention to such record.^{51/} These circumstances "made the difference between the trial of a man

51/

The record does not indicate whether the petitioner did in fact have a prior arrest record. The prejudice to him at his trial, however, did not come from the fact of any record of prior arrests, but by the strong implication that such record existed, engendered by the testimony of Sergeant McDonald, the instructions of the trial judge, and the fingerprint card itself. Indeed, jurors applying common sense could readily conclude that if the defendant did not have a record of prior arrests, there would be no reason to cover the reverse side of the fingerprint card with white paper.

46

presumptively innocent of any criminal wrongdoing" and the trial of a man who likely had a criminal record. United States v. Reed, supra, 376 F.2d at 228. Beyond question, the petitioner was clearly prejudiced and was deprived of a fair trial. United States v. Harrington, supra, 490 F.2d at 490.^{52/}

Not every evidentiary ruling rises to the magnitude of a constitutional issue. See Wilson v. MacDougall, Civil No. 13,815 (D. Conn. June 19, 1970). Although the issue of petitioner's prior arrest record arose in this case in the context of a ruling on evidence, the highly prejudicial character of the circumstances surrounding the ruling remove it from the class of merely harmful errors and demonstrate that it was so prejudicial as to result in the denial of that fair trial which the Constitution guarantees. There can be no question that the right to a fair trial is guaranteed by the Due Process Clause. As the Supreme Court stated in In re Murchison, 349 U.S. 133, 136 (1955), "A fair trial in a fair tribunal is a basic requirement of due process." See Lisenba v. California, 314 U.S. 219, 236 (1941); Lyons v. Oklahoma, 322 U.S. 596, 605 (1944); Blackburn v. Alabama, 361 U.S. 199, 206 (1960); Gideon v. Wainwright, 372 U.S. 335, 342 (1963);

^{52/}

The instant case is clearly distinguishable from Spencer v. Texas, 385 U.S. 554 (1967), in which the Court upheld procedures by which the jury was informed of the defendant's prior convictions only in the context of enforcement of the state's habitual criminal statutes. In the instant case, the testimony of Sergeant McDonald and the Bureau of Identification fingerprint card did not serve any such "valid state purpose," 385 U.S. at 563, but served only to eliminate the presumption of innocence to which the petitioner was entitled.

Washington v. Texas, 388 U.S. 14, 18 n.6 (1967); Ham v. South Carolina, 409 U.S. 524, 526 (1973). Redress for the denial of a fair trial "is within the ambit of habeas corpus." Baker v. Hudspeth, 129 F.2d 779, 781 (10th Cir.), cert. denied sub nom. Baker v. Hunter, 317 U.S. 681 (1942). See United States ex rel. Meers v. Wilkins, 326 F.2d 135 (2d Cir. 1964); Frayer v. Turner, 296 F.Supp. 1256 (D. Utah), aff'd 413 F.2d 546 (10th Cir. 1969); Hernandez v. Nelson, 298 F.Supp. 682, 685-687 (N.D. Calif. 1968), aff'd 411 F.2d 619 (9th Cir. 1969); Hawkins v. Robinson, supra, 367 F.Supp. at 1034, 1036. Since the circumstances surrounding the introduction of the fingerprint card were so prejudicial as to deny the petitioner a fair trial, he is entitled to issuance of the writ.

B. The Trial Judge's Supplemental Instructions to the Jury

Approximately two hours and forty-five minutes after the jury began deliberations, the trial judge called the jury back into the courtroom and the following occurred:

"THE COURT: I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of verdict.

You could readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

4A

Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sit-down dinner?

A JUROR: ~~I think~~ it is going to be a while.

THE COURT: That is all I need to know. You may retire to the jury room, and arrangements will be made. Thank you very much." 53/

The jury then retired to continue its deliberations. Approximately three hours later, the following occurred:

"THE COURT: Resume our session. Call the jury. (Francis J. McQuade, Esquire appeared in Mr. DeMayo's stead.)

THE COURT: Good evening ladies and gentlemen. I sense that you must be having a little difficulty in reaching your verdict. However, as I have told you time and again, your verdict must be unanimous. It is true, of course, that a verdict to which each juror agrees, has got to be his own conclusion and not the mere acquiescence in or the conclusions of his fellows.

That does not mean that each juror should pursue his own deliberations and judgment with no regard for the arguments and conclusions of his fellows, or that having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test its validity by the views entertained by the other jurors.

I am not telling you what to do. I am going to send you back in. Follow that theory, that you will resolve yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same evidence. You may return to the jury room, and I hope it has shed some light. Thank you." 54/

Less than one hour later the jury sent the judge a question,

53/
Transcript, pp. 347-348 (emphasis added).

54/
Transcript, pp. 348-349 (emphasis added).

"In the case of a murder one verdict, are we the sole judges of penalty of life imprisonment or death?"^{55/} The judge replied in the affirmative, and ten minutes later the jury brought in a verdict of guilty of murder in the second degree.^{56/} The petitioner does not challenge the propriety, per se, of a trial judge's giving supplemental instructions to a deadlocked jury, and with good reason. The Supreme Court long ago held that such instructions do not in themselves violate a defendant's constitutional rights. United States v. Allis, 155 U.S. 117, 123 (1894). Rather, the petitioner contends that the supplemental instructions were given "[w]ithout any indication of a jury deadlock,"^{57/} and that the instructions coerced the jury into rendering a verdict and thereby deprived him of due process of law.

The problem facing a trial judge when a jury is experiencing difficulty reaching a verdict "is by no means new." United States v. Bailey, 468 F.2d 652, 665 (5th Cir. 1972). "The solution of the 14th century circuit-riding judge was simply to load the jurors into ox carts and carry them about with him until a verdict was 'bounced out.'" Note, Deadlocked Juries and Dynamite: A Critical Look at the "Allen Charge," 31 U. Chi. L. Rev. 386 (1964). Such jurors were "kept without

^{55/}
Transcript, p. 349.

^{56/}
Transcript, p. 351.

^{57/}
Petitioner's Brief, p. 46.

meat, drink, fire, or candle, unless by permission of the judge, till they . . . all unanimously agreed." People v. Sheldon, 156 N.Y. 268, 50 N.E. 840, 842 (1898). Such measures have gone out of fashion in more recent years, although trial judges have threatened to deprive the jury of water and heat, in the dead of winter, while they continued to deliberate, Mead v. City of Richland Center, 237 Wis. 537 (1941), and have required the jurors to deliberate throughout the night, Commonwealth v. Moore, 398 Pa. 198 (1959).

A "more subtle technique, however, was soon found to be the giving of supplemental instructions, which exhorted the jury to arrive at a verdict." United States v. Bailey, supra, 468 F.2d at 665. Such instructions received early approval by the highest courts of Massachusetts, Commonwealth v. Tuey, 62 Mass. (8 Cush.) 1 (1851), and Connecticut, State v. Smith, 49 Conn. 376, 386 (1881).^{58/} In 1896 the United

^{58/}

"Although the verdict to which each juror agrees must, of course, be his own conclusion and not a mere acquiescence in the conclusions of his fellows, yet in order to bring twelve minds to a unanimous result, the jurors should examine with candor the questions submitted to them and with due regard and deference to the opinions of each other. In conferring together the jury ought to pay proper respect to each other's opinions, and listen with candor to each other's arguments. If much the larger number of the panel are for a conviction, a dissenting juror should consider whether the doubt in his own mind is a reasonable one which makes no impression upon the minds of so many men equally honest, equally intelligent with himself, who have heard the same evidence, with the same attention, and with equal desire

States Supreme Court, in Allen v. United States, 164 U.S. 492, 501-502 (1896), put its stamp of approval on supplemental instructions virtually identical to those upheld in Commonwealth v. Tuey and State v. Smith:

"These instructions were quite lengthy and were, in substance, that in a large proportion of cases absolute certainty could not be expected; that although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."

Id. at 501.^{59/}

58/ continued

to arrive at the truth, and under the sanction of the same oath. And on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves whether they may not reasonably, and ought not to, doubt the conclusions of a judgment which is not concurred in by most of those with whom they are associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellows."

49 Conn. at 386.

59/

A second paragraph from the Allen opinion, equally relevant with the main charge, is generally not given by modern trial judges:

52

The so-called "Allen charge" "was to become the well-spring from which all future judges would draw the solution to jury deadlocks." United States v. Bailey, supra, 468 F.2d at 665. The function of the Allen charge is obvious: it is intended to blast the jury out of the logjam in its deliberations, and has often been referred to as the "dynamite" charge. Though often criticized by appellate courts and commentators alike, the charge continues in widespread use "precisely because it works, because it can blast a verdict out of a jury otherwise unable to agree that a person is guilty." United States v. Bailey, supra, 468 F.2d at 666.

It is well-recognized that the central defect in the Allen charge is that it is unbalanced; i.e., it requires only the members of the minority on the jury, and not those of the majority, to re-examine their views. United States v. Fioravanti, 412 F.2d 407, 417 (3rd Cir.), cert. denied 396

59/ continued

"While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the juryroom.. The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury-room with a blind determination that the verdict shall represent his opinion of the case at that moment; or, that he should close his ears to the arguments of men who are equally honest and intelligent as himself."

164 U.S. at 501-502.

U.S. 837 (1969); Note, Future Renditions of "Allen"-type Charges Must Conform to the Standard Approved by the American Bar Association, 9 Houston L. Rev. 570, 571 (1972). The jurors in the minority may reasonably believe that the charge is directed solely at them, and that the trial judge has revealed what he believes the "correct" verdict to be. Note, Due Process, Judicial Economy and the Hung Jury: A Reexamination of the Allen Charge, 53 Va. L. Rev. 123, 129 (1967); Note, On Instructing Deadlocked Juries, 78 Yale L.J. 100, 139 (1968); Note, Deadlocked Juries and Dynamite, supra, at 388.

The great danger of the Allen charge is that its imbalance will have a coercive effect upon the jurors in the minority, i.e., that it will impel them to accept the majority view in spite of their own conscientious convictions as to the defendant's guilt or innocence. Because of this danger, courts have often required the trial judge to mitigate the effect of the Allen charge by assuring the jurors "in some form that a juror was not expected, in deference to the other jurors, to abandon his conscientious convictions." United States v. Kenner, 354 F.2d 780, 781-782 (2d Cir. 1965), cert. denied 383 U.S. 958 (1966). Thus in United States v. Rao, 394 F.2d 354 (2d Cir.), cert. denied 393 U.S. 845 (1968), the Court of Appeals for the Second Circuit stated that "[t]he considerable costs in money and time to both sides if a retrial is necessary certainly justify an instruction to the jury that if it is possible for them to reach a unanimous verdict without any

54

juror yielding a conscientious conviction . . . they should do so." Id. at 355 (emphasis added). This has been the consistent position of our Court of Appeals. See United States v. Circio, 279 F.2d 681 (2d Cir.), cert. denied 364 U.S. 824 (1960); United States v. Thomas, 282 F.2d 191 (2d Cir. 1960); United States v. Tolub, 309 F.2d 286 (2d Cir. 1962); United States v. Kanaher, 317 F.2d 459, 483-484 (2d Cir.), cert. denied Corallo v. United States, 375 U.S. 835 (1963); United States v. Kenner, supra, 354 F.2d at 782-783; United States v. Bilotti, 380 F.2d 649, 654 (2d Cir.) cert. denied 389 U.S. 944 (1967); United States v. Meyers, 410 F.2d 693, 697 (2d Cir.), cert. denied 396 U.S. 835 (1969); United States v. Barash, 412 F.2d 26, 31-32 (2d Cir.) cert. denied 396 U.S. 832 (1969); United States v. Hynes, 424 F.2d 754, 757 (2d Cir.) cert. denied 399 U.S. 933 (1970); United States v. Bowles, 428 F.2d 592, 595 (2d Cir.), cert. denied 400 U.S. 928 (1970); United States v. Cassino, 467 F.2d 610, 619 (2d Cir. 1972), cert. denied 410 U.S. 928 (1973); United States v. Jennings, 471 F.2d 1310, 1313-1314 (2d Cir.), cert. denied 411 U.S. 935 (1973). Moreover, several courts have sanctioned the Allen charge only when the instruction given by the trial judge does not deviate from the language of the Allen opinion. A few courts have refused to allow use of the Allen charge at all, and the American Bar Association has recommended that it be replaced.^{60/} The state of the law is summarized in United

^{60/}

American Bar Association, Standards Relating to Trial by Jury 145-46 (1968):

States v. Bailey, supra, 468 F.2d at 667-668, in which the Court of Appeals for the Fifth Circuit sustained an Allen charge with deep regret and only on the ground that other panels of the court had refused to abandon the instruction:

"(1) The District of Columbia Circuit has exercised its supervisory jurisdiction to abolish Allen and has replaced it with the ABA standard. See United States v. Thomas, 1971, 146 U.S.App.D.C. 101, 449 F.2d 1177, 1187 (en banc).

(2) The First Circuit has said that the dynamite charge 'should be used with great caution, and only when absolutely necessary.'

60/ continued

"§ 5.4 Length of Deliberations; deadlocked jury.

"(a) Before the jury retires for deliberation, the court may give an instruction which informs the jury:

(i) that in order to return a verdict, each juror must agree thereto;

(ii) that jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;

(iii) that each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;

(iv) that in the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and

(v) that no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

"(b) If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give or repeat an instruction as provided in subsection (a). The court shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

"(c) The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement."

United States v. Flannery, 1 Cir. 1971, 451 F.2d 880, 883. Although it did not require trial courts to employ the ABA standard, the First Circuit effectively ordered that if Allen charges are to be used, the Allen language must be precisely followed.

(3) The Second Circuit has such 'grave doubts' about Allen that it has given notice that it will not tolerate the slightest deviation from the approved language; furthermore, the Court stated that it permitted Allen to stand only by 'the barest margin.' See United States v. Kenner, 2 Cir. 1965, 354 F.2d 780, 782-784.

(4) The Third Circuit has flatly abolished the dynamite charge. 'Hereafter this court will not let a verdict stand which may have been influenced in any way by an Allen Charge.' United States v. Fioravanti, 3 Cir. 1969, 412 F.2d 407, 420.

(5) The Fourth Circuit has for a decade refused to allow trial judges to depart in the least from the language of the Allen case itself. See United States v. Rogers, 4 Cir. 1961, 289 F.2d 433.

(6) The Sixth Circuit has reversed convictions where only the slightest addition to the original Allen charge was made. See, e.g., United States v. Harris, 6 Cir. 1968, 391 F.2d 348, 355.

(7) The Seventh Circuit has abolished the Allen charge in favor of the ABA recommendation. United States v. Brown, 7 Cir. 1969, 411 F.2d 930; Brandom v. United States, 7 Cir. 1970, 431 F.2d 1391.

(8) The Eighth Circuit allows only the unadulterated recitation of the Supreme Court's paraphrase of the trial court's charge in Allen, and even reading the Supreme Court's 'second paragraph' to the jury is prohibited. See Chicago & E. I. Ry. v. Sellars, 8 Cir. 1925, 5 F.2d 31.

(9) The Ninth Circuit allows a supplemental instruction that does not urge the minority to rethink their position, does not tell the jury

they must reach a verdict, but that simply tells the jury to keep trying. See Walsh v. United States, 9 Cir. 1967, 371 F.2d 135.

(10) The Tenth Circuit 'cautiously' approves Allen, but it finds reversible error when any departures are made from the approved instruction's language. Compare Burroughs v. United States, 10 Cir. 1966, 365 F.2d 431, with Thompson v. Allen, 10 Cir. 1956, 240 F.2d 266. See also Goff v. United States, 10 Cir. 1971, 446 F.2d 623.

States too have joined the abandonment of Allen. Arizona has abolished Allen in its entirety. State v. Thomas, 86 Ariz. 161, 342 P.2d 197 (1959). Montana has put Allen to rest. State v. Randall, 137 Mont. 534, 353 P.2d 1054 (1960). Kansas, Idaho, and Iowa disapprove of and discourage any use of the dynamite charge. See, e.g., Eikmeier v. Bennett, 143 Kan. 888, 57 P.2d 87, 92 (1936); State v. Moon, 20 Idaho 202, 117 P. 757 (1911); and Middle States Util. Co. v. Incorporated Tel. Co., 222 Iowa 1275, 271 N.W. 180 (1937). Missouri allows only a 'temperate and moderate' supplemental instruction. See State v. Bozarth, 361 S.W.2d 819, 826 (Mo.Sup.1962)." (Footnote omitted).

Finally, a trial judge is absolutely forbidden to tell a jury that it must reach a verdict. In Jenkins v. United States, 380 U.S. 445 (1965), the trial judge had advised a deadlocked jury, "You have got to reach a decision in this case." The Supreme Court found that the judge's instruction was coercive and therefore reversed the defendant's conviction in a per curiam decision in which it quoted from the brief of the Solicitor General:

Of course, if this Court should conclude that the judge's statement had the coercive effect attributed to it, the judgment should be reversed and the cause remanded for a new trial; the principle that jurors may not be coerced into surrendering views conscientiously held is so clear as to require no elaboration.

380 U.S. at 446. Cf. Brasfield v. United States, 272 U.S.

5-1

448, 450 (1926); United States v. Dunkel, 173 F.2d 506 (2d Cir. 1949). See Note, On Instructing Deadlocked Juries, supra, at 136.

In the instant case, the trial judge's supplemental instructions compounded manipulation with misdirection, all to the undoubted prejudice of the defendant. The trial judge's statement in his first supplemental instruction, "I cannot allow you to leave before I have some sort of verdict," can only be seen as the kind of command to the jury so summarily condemned by the Supreme Court in Jenkins. The pronouncement that a declaration of a mistrial was inconceivable, that it "would be an impossibility," was a clearly erroneous statement of the law.

The trial judge gave his second supplemental instruction without having received any communication from the jury that it was unable to agree. The language of the instruction was not the language of the Allen charge. The instruction, in effect, paid lip service to the proposition that each juror should follow his own convictions, in the only portion of the instruction which tracked the language of State v. Smith, then laid strong emphasis on the desirability of jurors re-examining their own views in light of the conclusions reached by the others. Although the instruction did not in terms urge those jurors in the minority to give careful consideration to the views of the majority, that point was undoubtedly clear from the circumstances and the context of the judge's admonition. The directive to "Follow that theory, that you will resolve

yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same evidence" (~~emphasis added~~), was unquestionably an injunction to the jurors in the minority to "follow," as a matter of "duty," the conclusions of the majority, whatever they might be. The trial judge gave no mitigating instruction assuring the jurors in the minority that they were not to yield their conscientious convictions: indeed, the thrust of the total instruction was that the jurors in the minority should yield their own views in favor of those of the majority. The impact of the judge's earlier promise to keep the jurors there until they reached a verdict could not have been lost on the recalcitrant members of the jury. The supplemental instructions in the instant case were no "dynamite charge," designed to blast the jury off dead center: they were more like a nuclear detonation, annihilating the dissenters completely. These instructions, erroneous in their substance and coercive in their effect, denied the petitioner a fair trial and therefore deprived him of a right guaranteed by the Constitution. See pp. 41-43 supra. As our Court of Appeals stated more than forty years ago in a case raising similar issues:

"The cases all recognize that the surrender of the independent judgment of a jury may not be had by command or coercion. It is not enough to cure the error to conventionally say that it is the function of the jury to decide questions of fact. Pressure of whatever character, whether acting on the fears or hopes of the jury, if so exerted as to overbear their volition without convincing their judgment, is a species of restraint under which no valid judgment can be made to support a conviction. No force should be used

or threatened, and carried to such a degree that the juror's discretion and judgment is overborne, resulting in either undue influence or coercion. A judge may advise, and he may persuade, but he may not command, unduly influence, or ~~coerce~~. The supplementary instructions were effective, but a breach of the right of the plaintiffs in error to an impartial charge, free from animated argument and coercive entreaties. What occurred deprived the plaintiffs in error of that fair and impartial trial the law accords to them, no matter how convincing their guilt may appear."

Wissel v. United States, 22 F.2d 468, 471 (2d Cir. 1927).

Cf. Tumey v. Ohio, 273 U.S. 510, 532 (1927) ("Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."). Even if the two circumstances discussed herein--i.e., the presentation to the jury of highly prejudicial information regarding petitioner's prior arrest record, and the coercive supplementary instruction by the trial judge--were not, when viewed separately, thought to deprive the petitioner of that fair trial which is guaranteed by the Constitution, the combination of the prejudicial evidence and the coercive instruction, which in effect shattered the presumption of innocence and then forced the jury to a verdict, clearly violated petitioner's right to due process of law.

IT IS ORDERED that a writ of habeas corpus should issue out of this court discharging the petitioner from

custody unless the petitioner, John Wesley Ralls, is afforded a new trial within sixty days.

This Court commends appointed counsel for the petitioner for their diligent and resourceful efforts in his behalf.

Dated at Hartford, Connecticut, this day of May,
1974.

M. Joseph Blumenfeld
United States District Judge

62

49

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PETITION FOR A WRIT OF HABEAS CORPUS
(By a person in State custody)

Full name of Petitioner

John Wesley Ralls

VS

10/17 73
Amg
Clerk

Civil No. H 205
To be
supplied
by Clerk

State of Connecticut
Name of Respondent

1. Place of detention. **Connecticut Correctional Institution
Somers, Conn.**
2. Name and location of the court which imposed sentence. **Superior Court
in and for the county of New Haven, at New Haven, Conn.**
3. Case number or numbers in court where sentenced. **16334**
4. The offense or offenses for which sentence was imposed. **Second degree murder**
5. Date and terms of sentence or sentences. **12/11/70 - Life**
6. Was a finding of guilty made: (Check one)
(a) After a plea of guilty?
(b) After a plea of nolo contendere?
(c) After a trial by a judge?
(d) After a trial by a judge and jury? **Yes**
7. Did you appeal from the judgment of conviction or sentence imposed? If you answered yes, then: **Yes**
(a) To what court or courts did you appeal? **State Supreme Court**
(b) State the decision or decisions of the court or courts to which you appealed. **Appeal still pending**
(c) If you know, give the date of each decision and a copy or citation of each.
8. If you did not appeal from your conviction and sentence or sentences why did you not do so?

D.C.:C-2-b

63

9. Now state simply and briefly why you believe that you are unlawfully in custody. Be sure and give all facts which support your reasons. Denial of appellate review, due to lack of diligence on the part of the state. Cases cited therein. Dixon vs. State of Florida, 388 F.2d 424 (1968) and

Dixon vs. State of Kansas, 356 F.2d 654 (1966)

10. Before filing this petition have you filed in any State or Federal court any petition for a writ of habeas corpus or for any other relief? No.

(a) If you have, name the court or courts and the results of your filing these petitions or motions.

(b) On what ground or grounds did you seek relief in those petitions or motions?

(c) If the ground or grounds in those motions or petitions did not include the grounds you set forth in this petition, why did you not set forth these grounds?

11. Were you represented by an attorney or attorneys at any time during the course of the proceedings against you? Yes

(a) Name and give the address of such attorney or attorneys, if any, and state at what stage of the proceedings he or they represented you.

On appeal: Mr. John R. Williams During the trial: Mr. Anthony DeMayo
265 Church street Public Defender
New Haven, Conn.

12. Have you read the instructions furnished with this petition and checked all of the answers and statements made in this petition? Yes.

John Wesley Ball
Signature of Petitioner

State of Connecticut)
County of Tolland) ss Somers

John Wesley Ball, being first duly sworn, states that he
Name of Petitioner
has signed the foregoing petition and that the information therein is
true and correct to the best of his knowledge and belief.

John Wesley Ball
Signature of Petitioner

Subscribed and sworn to before me this 31st day of August 1973

Charles W. McCune
Notary Public
My Commission Expires March 31, 1977

(Approved by the court February 1, 1965)

64
D.C.:C-2-b

57

UNITED STATES DISTRICT COURT
for the
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS

v.

STATE of CONNECTICUT

CIVIL No. H 205

PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF A FULL EVIDENTIARY
HEARING UPON A FINDING OF INORDINATE
DELAY IN ADJUDICATION OF DIRECT
APPEAL, DENIAL OF EQUAL PROTECTION
OF THE LAW AND INEFFECTIVE ASSISTANCE
OF TRIAL COUNSEL

Petitioner was arrested March 4, 1970, for alleged first degree murder, New Haven Superior Court Docket No. 16334.

After a trial by jury of twelve (12), Petitioner was found guilty of second degree murder and subsequently sentenced to life in prison, on December 11, 1970. Notice of right to appeal was filed December 11, 1970, well within the twenty (20) days allotted by Connecticut Law.

After arriving in prison, Petitioner filed with the Clerk of the New Haven Superior Court notice of right to have sentence reviewed on December 22, 1970, well within the thirty (30) days allotted by Connecticut Law.

Petitioner has been incarcerated without being able to post bail since ~~December~~ March 4, 1970, a total of three (3) years, five (5) months and twenty-seven (27) days. Petitioner has been awaiting appeal since December 18, 1971, a total of one (1) year, eight (8) months and thirteen (13) days (see attached 1).

Mr. Anthony V. DeMayo, hereinafter referred to as TRIAL COUNSEL, on January 18, 1971, informed the Petitioner that appellate proceedings in Connecticut are very slow (see 2 attached).

Mr. John R. Williams, hereinafter referred to as APPEAL COUNSEL, on September 13, 1972, informed the Petitioner that appellate proceedings in Connecticut are very slow (see 3 attached).

Petitioner was informed by APPEAL COUNSEL January 9, 1973, that the state had filed its appeal draft in his case (see 4 attached).

Petitioner was informed by APPEAL COUNSEL April 11, 1973, that the trial judge had filed and withdrew a partial appeal draft finding (see 5 attached).

Petitioner was informed by the review division of the Superior Court January 7, 1971, that he could not have his sentence reviewed because his appeal was still pending (see 6 attached).

~~TRIAL COUNSEL for the Petitioner informed the Petitioner on September~~ TRIAL COUNSEL informed the Petitioner on September 10, 1971, that TRIAL COUNSEL could not withdraw from his case (see 7 attached).

Petitioner wrote to State Supreme Justice of the State Supreme Court John P. Cotter for assistance in relief of TRIAL COUNSEL. He recieved no reply, however, shortly thereafter he was taken to a hearing on motions for dismissal of TRIAL COUNSEL and appointment of APPEAL COUNSEL. The Superior Court judge presiding over the hearing of the motions was Judge Otto H. LaMacchia. Hearings were held on October 28, 1971.

TRIAL COUNSEL informed the Petitioner on June 24, 1971, that he was in receipt of the trial transcript (see 8 attached).

As of October 18, 1971, TRIAL COUNSEL had filed a ten (10) page, fifty (50) paragraph appeal draft from a four-hundred (400) page transcript (see 1, 3 and 9 attached).

APPEAL COUNSEL was appointed October 18, 1971, on December 18, 1971, two (2) months later, he informed the Petitioner that he had filed a seven-hundred (700) paragraph appeal draft (see 1 attached).

During jury deliberation, November 12, 1970, TRIAL COUNSEL left the court building and never returned. At Eight-fifteen O'clock (8:15 P.M.) P.M., November 12, 1970, the trial judge called out the jury to admonish them for taking too much time. Petitioner was not represented by counsel. At Nine O'clock P.M. (9:00 P.M.) November 12, 1970, the jury came out for questions and Petitioner was introduced to Mr. McQuade by the trial judge who stated that Mr. McQuade was to stand instead of TRIAL COUNSEL.

APPEAL COUNSEL has stated that he finds TRIAL COUNSEL's representation to have been ineffective (see 1, 3, 5, 10, and 11 attached).

APPEAL COUNSEL has included ineffectiveness of TRIAL COUNSEL in his appeal draft findings (see 1 and 10 attached).

PRAYER

Petitioner respectfully prays that this Honorable Court will consider the findings in WAY v. CROUSE, 421 F.2d 145 (1970), where it was stated that "delay in determination of Direct Appeal, as well as delay in adjudication of postconviction appeal, may work denial of due process." and WEST v. STATE OF LOUISIANA, 478 F.2d 1026 (1973), where it was found that "lengthy delay in state proceedings, if unjustified, may itself be sufficient reason for waiving the exhaustion requirement. see DIXON v. FLORIDA, cir. 5 1968, 333 F.2d 424." and upon considering the above mentioned rulings weigh that two (2) months for Petitioner's counsel to file appeal briefs juxtaposed with the state's taking over a year and the judge still not having filed constitutes a long time and/or denial of equal protection of the law.

Petitioner respectfully prays that this Honorable Court will further consider WAY v. CROUSE, where it was stated, "the question presented here is in what court should Petitioner seek vindication of his asserted Constitutional grievance. In our view, Way properly resorted to the Federal Court, which should not, without knowing the facts and circumstances of the eighteen month delay, have required him at this late date to commence a completely new and independent proceeding through the very courts which are responsible, on the face of the readings, for the very delay of which he complains." and WEST v. STATE OF LOUISIANA, where it was said, "if delay were the only consideration, the proper course would be to remand the case to the district court for a hearing as to whether the delay was justified."

Petitioner respectfully prays that this Honorable Court will consider UNITED STATES v. SMITH, 411 F.2d (6th cir. 1969) and find that the absence of Counsel during polling of the jury was in violation of Petitioner's right to have counsel present at all stages of a criminal proceeding.

Wherefore, Petitioner respectfully prays that this Honorable Court enter judgement granting Petitioner a FULL EVIDENTIARY HEARING or any relief that this Honorable Court deems just and proper.

Respectfully submitted,

John Wesley Ralls
John Wesley Ralls
In Propria Persona

54

FILED

UNITED STATES DISTRICT COURT Oct 17

5 57 AM '73

DISTRICT OF CONNECTICUT

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

JOHN WESLEY PAIS

v.

:

CIVIL NO.

H 205

JOHN MANSON, et al

:

16334
ORDER TO SHOW CAUSE WHY A WRIT OF
HABEAS CORPUS SHOULD NOT BE ISSUED

Examination of this pro se petition for writ of habeas corpus, read in the light of prior state proceedings by virtue of which petitioner is now held as a state prisoner, is open to the interpretation that he was denied his Constitutional rights at the trial at which he was convicted by reason of:

1. incompetency of assigned counsel; and
2. undue coercion of the jury by the presiding judge.

The conduct challenged in these proceedings and the nature of the legal and factual issues lurking in this pro se petition persuade the court that it is desirable that further proceedings be conducted with the benefit of counsel to aid the petitioner. Accordingly, Morton Cohen is appointed to represent the petitioner in these proceedings, and he is hereby directed to promptly file an amended petition. Since the general nature of the issues already sufficiently appears, the further refinement by reason of amended petition need not delay framing of the issues for the purpose of proceeding expeditiously with this matter. It is, therefore,

68

ORDERED that a copy of this order, together with a copy of the verified petition, be served by the United States Marshal, or his Deputy, upon John Manson, Commissioner of Corrections, and also upon the State's Attorney for New Haven County, on or before October 23, 1973; and it is further

ORDERED that said John Manson, Commissioner of Corrections, file with this court on or before October 29, 1973, a written return to the allegations of said petition. It is understood that amendments to the return to meet any substantive issues subsequently raised will be readily granted. And it is further

ORDERED that the petitioner, John Wesley Ralls, be retained within this district until further order of this court.

Dated at Hartford, Connecticut, this 16th day of October, 1973.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
Chief Judge

I hereby certify that the foregoing
is a true and correct copy of the original
10-16

By: Wm M. Brew
Deputy Clerk

10/16/73, 4:43 P.M.

"The filing fee and Marshal's fees are retained; 50¢ retained"

Robert F. [Signature]

56

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,
PETITIONER

CIVIL NO. H-205

V.

JOHN MANSON, COMM-
MISSIONER OF CORRECTIONS,
STATE OF CONNECTICUT,
RESPONDENT

RETURN TO APPLICATION FOR A
WRIT OF HABEAS CORPUS

1. The Respondent admits that the Petitioner is incarcerated in the Correctional Institution at Somers, Connecticut.

2. The chronology of the Petitioner's conviction and the appeal therefrom is as follows:

a. Petitioner who had been indicted for murder in the first degree was found guilty, by a jury, of murder in the second degree on November 17, 1970, at 9:15 P.M. (Conn. Gen. Stats. Secs. 53-9, 53-10)

b. Petitioner was sentenced to life imprisonment pur-

suant to said verdict on December 11, 1970. (Conn. Gen. Stat. Sec. 53-11) by George, J.

c. Petitioner appealed his conviction and on August 19, 1971, his attorney Anthony V. DeMayo, Esq., Public Defender in New Haven County filed the required request for finding and draft finding. (Conn. Practice Book Sec. 613 et seq)

d. Petitioner discharged Attorney DeMayo and on October 28, 1971, John R. Williams, Esq., was appointed a Special Public Defender, to represent Petitioner, at Petitioner's request.

e. Attorney Williams moved for permission to file an amended request for finding and an amended draft finding and such were filed on January 3, 1972.

f. The State filed its counter finding on January 5, 1973.

g. The trial court (George, J.) filed its finding on March 12, 1973.

h. Assignments of error or motions to correct the trial court's finding are required to be made within ten days unless an appropriate motion for extension is made and granted (Conn. Practice Book Secs. 623, 624).

i. On March 12, 1973, Petitioner moved to correct the trial court's finding.

j. On March 14, 1973, the State moved to correct the trial court's finding.

k. The trial court refiled its finding with corrections on May 2, 1973.

l. On May 10, 1973, Petitioner moved for and received an extension of time from the trial court within which to file his assignment of errors to the finding as corrected.

m. Petitioner's assignment of errors was filed on June 1, 1973.

n. The trial court corrected its finding in minor detail on June 8, 1973.

o. The record for the Connecticut Supreme Court was sent to the printer by the Clerk of the Superior Court at New Haven on June 28, 1973.

p. Said record is to be received by the Clerk of the Superior Court from the printer on October 29, or October 30, 1973, for distribution to counsel.

q. Petitioner's brief to the Connecticut Supreme Court is due within forty-five days after receipt of the printed record by counsel and the State's brief is due within thirty days after the Petitioner's brief is filed, unless motions for extensions are made and granted. (Conn. Practice Book Sec. 724)

3. Petitioner's appellate counsel, Mr. Williams, has raised the issue of the competency of Petitioner's trial counsel in Petitioner's direct appeal to the Supreme Court of Connecticut.

4. All the other issues relating to Petitioner's trial which have been raised in Petitioner's application for a Writ of Habeas Corpus in this court have been raised in the direct appeal to the Supreme Court of Connecticut.

5. Since the printed record is due to be received by the Clerk of the Superior Court at this time, Respondent will submit the printed record, when received, as a part of this return rather than submitting the typewritten appeal documents.

6. Several extension of time for the preparation of Petitioner's draft finding were made by his original counsel and his present counsel and were agreed to by the State.

7. Several extensions of time for the preparation of the State's counter finding were agreed to by Petitioner's present

counsel in the state proceedings.

BY WAY OF AFFIRMATIVE DEFENSE

1. Petitioner has failed to exhaust state remedies with respect to the substantive claims of ineffective assistance of trial counsel, coercion of the jury and absence of trial counsel during the jury's deliberation and return of verdict, etc., as said claims are presently pending before the Supreme Court of Connecticut.

2. Petitioner has failed to exhaust State remedies with respect to his claim of lack of diligence by the State. The rules of the Supreme Court of Connecticut provide an appropriate remedy to determine such a claim. See Conn. Practice Book Sec. 696.

3. Much of the delay asserted in the State Appellate Proceedings was caused by Petitioner's change of counsel and extensions of time requested by Petitioner's original and present counsel in the state proceedings to which extensions the State always agreed.

4. The extensions of time requested by the State during the course of the appellate proceedings, having been previously agreed to by Petitioner should be considered the subject of waiver and should not be permitted to be resurrected on this Habeas Corpus proceeding.

5. Petitioner's application for a Writ of Habeas Corpus to this court, at this time, represents an attempt to remove from the consideration of the Connecticut Supreme Court questions that are properly before it and is a deliberate by-pass of the procedures of the state courts.

6. Since all that remains for the determination of Petitioner's appeal by the Connecticut Supreme Court, at this time, are the briefs of counsel, intervention by this court would be injurious to and violative of the principles and rules of comity between the Federal and State judicial systems.

JOHN MANSON, COMMISSIONER

BY: Michael Dearington
MICHAEL DEARINGTON
ASSISTANT STATE'S ATTORNEY

61

CERTIFICATION

This is to certify that a copy of the foregoing return was sent to John Wesley Ralls, Box 100, Somers, Connecticut, and Morton Cohen, Esq., ~~University of Connecticut Law School~~, 1800 Asylum Avenue, West Hartford, Connecticut, postage prepaid.

Michael Dearington
MICHAEL DEARINGTON
ASSISTANT STATE'S ATTORNEY

62

OFFICE OF
THE STATE'S ATTORNEY

NEW HAVEN COUNTY

COURT HOUSE, 121 ELM STREET

NEW HAVEN, CONNECTICUT 06510

TELEPHONE (203) 772-1740 AND 772-1586

ARNOLD MARKLE
STATE'S ATTORNEY
RICHARD P. SPERANDEO
CHIEF ASSISTANT STATE'S ATTORNEY
ROBERT K. WALSH
ASSISTANT STATE'S ATTORNEY
JOHN T. REDWAY
ASSISTANT STATE'S ATTORNEY
JOHN J. KELLY
ASSISTANT STATE'S ATTORNEY
JERROLD H. BARNETT
ASSISTANT STATE'S ATTORNEY
MICHAEL DEARINGTON
ASSISTANT STATE'S ATTORNEY

COUNTY DETECTIVES

JAMES M. KINGSTON
WILLIAM E. DOYLE, JR.
BERNARD J. LAWLOR
WILLIAM J. DEMLONG
LESTER MEDICAN
BRIAN G. MALONEY

November 2, 1973

Judge Joseph Blumenfeld
Chief Judge
United States District Court
Federal Building
450 Main Street
Hartford, Connecticut

Re: Ralls v. Manson, Civil No. H-205

Dear Judge Blumenfeld:

Please find enclosed the printed record before the
Supreme Court of Connecticut, which is mentioned in the
State's Return to Application For A Writ of Habeas Corpus
in the above captioned case.

Very truly yours,

Michael Dearington

Michael Dearington
Assistant State's Attorney

MD/js
Enc. (1)

76

13

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner :
vs. :
JOHN MANSON, et. al, :
Respondents : DECEMBER 19, 1973

AMENDED PETITION FOR WRIT OF
HABEAS CORPUS

Now comes the Petitioner, JOHN WESLEY RALLS, and petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. #2241, upon the following facts:

1. Petitioner is currently incarcerated at the Connecticut Correctional Institution at Somers, Connecticut where he is serving a sentence of life imprisonment pursuant to conviction on November 17, 1970, for murder in the second degree after jury trial in Connecticut Superior Court (at New Haven).

2. Petitioner's trial was conducted in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, in the following respects:

A. Petitioner was denied the effective assistance of counsel at critical stages of the proceedings against him.

i. At trial, petitioner's attorney, Anthony DeMayo, was not present at proceedings conducted after the jury commenced deliberations and prior to verdict. During such proceedings the court three times delivered special instructions to the jury, once in the absence of any counsel for petitioner and twice in the presence of a substitute counsel unfamiliar with the case. [See excerpt of trial transcript, set

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

-2-

forth and attached hereto as Appendix A]. Petitioner at no time wived the presence of DeMayo at such proceedings.

ii. Although petitioner was charged with murder in the first degree, DeMayo did not confer with petitioner about the case until the day of the trial, shortly before the actual proceedings commenced. DeMayo did not speak with possible defense witnesses, nor otherwise investigate petitioner's case prior to trial. At trial, DeMayo presented no defense in petitioner's behalf.

B. The Court's instructions to the jury applied improper pressure on the jury to agree on a unanimous decision in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix B].

i. The jury began its deliberations at approximately 2:15 p.m. on November 17, 1970. At approximately 5:00 p.m. on that date, the court recalled the jury and without any indication by the jury that its deliberations were deadlocked, instructed the jury as follows:

I cannot allow you to leave before I have some sort of verdict.

You could readily see, if somebody got sick overnight, I would have to declare a mis-trial, and this case would have to start all over again. It would be an impossibility.

[Trans. p. 347. Emphasis added.]

ii. Petitioner was not represented by counsel when this instruction was given to the jury, and therefore, no objection was made to it.

C. Statements made by petitioner at the time of his arrest were improperly admitted for consideration by the jury, in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix C.]

i. At the trial, Malcolm E. McHenry, a Hamden police officer, testified concerning statements made by petitioner at the time of his arrest. McHenry first stated that at approximately 5:30 p.m. on the day of petitioner's arrest, he (McHenry) had informed petitioner of

71

his right to remain silent and his right to the assistance of counsel. At no time did McHenry in any way indicate that petitioner waived these rights at this time. Nevertheless, a statement made by petitioner at this time was admitted into evidence.

ii. McHenry ~~further~~ testified, over defense counsel's overruled objection, as to alibi statements made by petitioner at approximately 6:30 p.m. on the day of petitioner's arrest. These statements were admitted even though McHenry testified that he did not readvise petitioner of his constitutional rights prior to recommencing interrogation of petitioner. Nor did McHenry in any way indicate that petitioner had at this time or previously waived his right to remain silent or to the assistance of counsel.

iii. The prosecution subsequently produced evidence casting doubt on the truth of petitioner's alibi statements. Petitioner at no time testified, nor was any evidence presented by petitioner concerning such alibi.

D. The jury was improperly informed of petitioner's prior arrests, in denial of due process of law. [See excerpt of trial transcript, set forth and attached hereto as Appendix D].

i. At trial, James E. McDonald of the Connecticut State Police Department testified concerning a latent fingerprint obtained at the scene of the crime. In so testifying, McDonald compared this fingerprint with a fingerprint of petitioner contained on a " ... fingerprint card of JOHN RALLS which was on file at the Bureau of Identification ..." and also on file at the "central Bureau for all the criminal arrest records in the State of Connecticut."

ii. A motion for a mistrial on the grounds of irreparable prejudice to petitioner was denied by the Court. The fingerprint card was itself admitted into evidence and examined by the jury. Petitioner at no time testified, nor was any evidence of petitioner's character or prior arrest record presented.

3. On December 30, 1970, petitioner gave notice, through counsel, of his intent to appeal his conviction to the Connecticut Supreme Court.

4. Petitioner's appeal has, as of this date, yet to be decided by the Connecticut Supreme Court and will not be decided for months, possibly years.

5. Petitioner's failure to exhaust state remedies does not foreclose the jurisdiction of the Court since such remedies are ineffective to protect his rights.

A. The failure of the Connecticut Supreme Court to adjudicate the merits of petitioner's appeal in the three years since such appeal was initiated is a direct result of existing Connecticut appellate procedures and has denied petitioner an effective state forum in which to vindicate his rights.

B. Petitioner has not waived his right to challenge the delay in adjudicating his appeal.

i. Of the three year delay in deciding petitioner's appeal only thirteen months are attributable to extensions granted by appellate counsel, with the remaining time the normal and expected result of Connecticut appellate procedures.

ii. Petitioner is not bound by extensions of time agreed to by his appellate counsel since:

(a) Petitioner was unaware of such extensions and at all times encouraged counsel to hasten his appeal.

(b) Such extensions were a necessary result of existing Connecticut appellate procedures.

(c) Appellate counsel's willingness to grant such extensions constituted ineffective assistance of counsel.

(d) Such counsel was appointed by the state, and his actions therefore constituted state action in denial of due process of law.

Because of the foregoing facts, petitioner is being restrained of his liberty ~~by the respondent in violation~~ of the Constitution of the United States, and he therefore prays that the writ be granted and an order be entered discharging him from custody.

Respectfully submitted,
THE PETITIONER

MORTON P. COHEN

DAVID S. GOLUB
Attorneys for Petitioner

PS

68

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing amended petition was sent, postage prepaid, to John Manson, Commissioner of Corrections, State of Connecticut, 340 Capitol Avenue, Hartford, Connecticut, and Michael Dearington, Assistant State's Attorney, 121 Elm Street, New Haven, Connecticut, this 20th day of December, 1973.

David S. Whit

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

A2

69

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN MANSON, et. al., :
Respondents. :

S T I P U L A T I O N

It is hereby agreed by and between the parties herein, by their respective attorneys that:

1. The transcript of the trial of petitioner before the New Haven Superior Court wherein petitioner was convicted of Second Degree Murder is entered into evidence as petitioner's Exhibit No. 1.
2. The documents appended hereto and originating in the files of the New Haven Superior Court regarding the appeal of petitioner herein to the Connecticut Supreme Court are admitted into evidence as petitioner's Exhibits Nos. *Two through Ninety-five.*
3. Judge George of the New Haven Superior Court has presented before him a Motion for Extension of Time until May of 1974 made by JOHN WILLIAMS, attorney for petitioner herein, in his appeal before the Connecticut Supreme Court, which motion was made in December of 1973. Said motion has not been acted upon due to the illness of Judge George, nor had it been transferred to another judge for decision.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

A3

4. The Connecticut Supreme Court does not sit to hear arguments nor
~~render appellate final decisions~~ ^{JULY} between the months of June and September
inclusively of each year, however it does render decisions
through the month of August.

BY: PC

MORTON P. COHEN
Attorney for Petitioner
University of Connecticut School of Law
Legal Clinic
West Hartford, Connecticut

BY: M.D

MICHAEL DEARINGTON
Assistant State's Attorney
121 Elm Street
New Haven, Connecticut

DATED: JANUARY 15, 1974

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

PC

71
UNITED STATES DISTRICT COURT
for the

DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,
Petitioner

vs.

: CIVIL NO. H-205

JOHN MANSON,
Respondents

: MARCH 15, 1974.

AMENDED RETURN TO AMENDED PETITION
FOR WRIT OF HABEAS CORPUS

1. The respondent admits that the petitioner is presently incarcerated in the Connecticut Correctional Institution at Somers.

2. The respondent denies the claims of constitutional error allegedly occurring in the course of the trial and further contends that these very claims are premature in that they are presently the subject of his direct appeal to the Supreme Court of Connecticut, a court competent to adjudicate the merits of the claimed constitutional violations.

3. Specifically, all but one of the petitioner's claims of violations of his constitutional rights are contained in the printed record (Respondent's Exhibit 1) of the pending appeal to the Supreme Court of Connecticut as follows:

A) Claim 2 (A) (i) has been raised in Exhibit 1 at paragraph 759 pages 232-236 and Assignment of Error Number 60 at page 274. The claim that an instruction was given in the absence of any counsel for the petitioner is in fact refuted by petitioner's affidavit prepared by his present counsel and on file with this Court.

B) Claim 2 (B) (i) is contained in the record (Respondent's Exhibit 1) in paragraph 759 at page 233 and Assignment of Error Number 61 at page 274.

C) Claim 2 (B) (ii) is also raised in the record, (Respondent's Exhibit 1) in paragraph 759 at page 233 and Assignment of Error No. 60 at page 274.

D) Claim 2 (C) (i) and Claim 2 (C) (ii) are raised in the record (Respondent's Exhibit 1) in paragraph 757 at pages 212-231 and Assignments of Error Numbers 50, 51, 52, 53, 54 and 55 at pages 273 and 274.

E) Claim 2 (C) (iii) is raised in the record (Respondent's Exhibit 1) in paragraph 757 at pages 212-231 and Assignments of Error Numbers 51, 52, 53, 54 and 55 at pages 273 and 274.

F) Claim 2 (D) (i) and Claim 2 (D) (ii) are raised in the record (Respondent's Exhibit 1) in paragraph 741 at pages 127-130 and in Assignments of Error (Numbers 23, 25 and 26 at page 271.

4. Although the petitioner has raised the claim of ineffective assistance of counsel in Assignment of Error Number 63 at page 274 of the record (Respondent's Exhibit 1), the allegation of paragraph 2 (A) (ii) seemingly concerns matters dehors the record (Respondent's Exhibit 1). However, the petitioner has an adequate state remedy to pursue this matter via a petition for a Writ of Habeas Corpus as provided in Sec. 52-466 of the General Statutes of Connecticut and is required to pursue that remedy in accordance with 28 U. S. C. Sec. 2254

5. Paragraph 3 is admitted.

6. The Respondent admits the paragraph four in that the appeal ~~has not yet been decided but~~ denies that it will not be decided for "months, possibly years."

7. The Respondent claims that the Petitioner's failure to exhaust state remedies does foreclose the jurisdiction of this Court and that the remedies are effective to protect his rights.

8. In paragraphs three through five of the Amended Petition, the Petitioner claims that the deprivation of his constitutional rights is the result of both ineffective counsel and the appellate rules.

9. The Rules of the Supreme Court of Connecticut governing the procedure of appeals to it, which rules are of statewide application and which rules that Court has the power to promulgate pursuant to Article II and Article V Sec. 1 of the Connecticut Constitution, require the following:

A). A request for a finding by the trial court and a draft finding by the appellant; Secs. 29 and 30 of the Practice Book);

B) A counter finding by the appellee (Sec. 631 of the Practice Book);

C) A finding by the trial court (Sec. 632 of the Practice Book);

D) Assignments of Error concerning the finding directed to the Supreme Court. (Secs. 621-623, 636 of the Practice Book).

10. The function of the finding in an appeal from a jury trial, as occurred in the Petitioner's case, is to test the correctness of the charge to the jury and of rulings of the trial court. ~~(Sec. 630 of the Practice Book)~~. In a jury case the finding is irrelevant for purposes of testing the issues of whether or not a motion to set aside a verdict was properly decided. Said issue is decided by referring to the evidence appearing in the appendices to the brief. (Secs. 641, 642 of the Practice Book).

11. In the Petitioner's criminal case, no motion to set aside the evidence was made and consequently said evidence is not a part of his appeal. (See Respondent's Exhibit 7).

12. The chronology of the Petitioner's appeal in the state courts is as follows:

a. The Petitioner filed his notice to take an appeal on December 30, 1970. (Petitioner's Exhibit 4).

b. On August 19, 1971, Attorney DeMayo, Petitioner's trial counsel, who he now claims in his state appeal to have been incompetent, filed a request for a finding and a draft finding (Petitioner's Exhibit 11).

c. As shown by Petitioner's Exhibit Two (C) Attorney John R. Williams, who presently represents the Petitioner in the appeal pending before the Supreme Court of Connecticut and whose competence has not been called into question by the Petitioner before that court, and whose competence has not been called into question before this court except as to his consent to the state's

extension of time to file its Counterfinding, was appointed to represent the Petitioner as a Special Public Defender at the Petitioner's request by the Superior Court for New Haven County on October 28, 1971.

d. Attorney Williams moved for and received permission to file an amended draft finding and request for a finding (Petitioner's Exhibit 2 (c)) on November 15, 1971.

e. Attorney Williams filed an amended draft finding (Petitioner's Exhibit 2 (c)) on December 15, 1971, and an amended request for a finding (Petitioner's Exhibit 2 (c)) on January 3, 1972.

f. Thereafter the state moved for and received extensions of time to file its counterfinding totalling one year and filed its counterfinding (Petitioner's Exhibits 2 (c), (d) and (e), January 5, 1973.

g. All of Attorney Williams' extensions of time were consented to by the state and all of the state's extensions of time were consented to by Attorney Williams.

h. The trial court filed its finding (Petitioner's Exhibit 2 (e)) on March 12, 1973.

i. On March 12, 1973, Attorney Williams moved to correct the trial court's finding and on March 14, 1973, the State also moved to correct said finding pursuant to the rules of the Connecticut Supreme Court (Section 636 of the Practice Book).

j. The trial court corrected its finding (Petitioner's Exhibit 2 (e)) on May 2, 1973.

k. On May 10, 1973, Attorney Williams moved for an extension until June 1, 1973, to file assignments of error directed to the trial court's findings which assignments of error were filed on May 29, 1973 (Petitioner's Exhibit 2 (e)).

l. The printed record (Respondent's Exhibit 1) was sent to counsel by the Clerk of the Superior Court on October 31, 1973.

m. On October 31, 1973, Attorney Williams moved for permission to file a typewritten brief to the Connecticut Supreme Court on a claim that unless granted permission he could not have his brief filed within forty-five days of receipt of the printed record as required by the rules of the Connecticut Supreme Court (Section 724 of the Connecticut Practice Book, as amended). In this motion (Respondent's Exhibit 2 he alleged that he had submitted the appendix to his brief to the printer in July 1973 and had not received it by October 31, 1973. This motion was denied by the Connecticut Supreme Court.

13. In the absence of a motion to set aside the verdict it would appear that pursuant to the rules of the Connecticut Supreme Court the issues to be decided on the Petitioner's appeal would be encompassed mainly by the printed record (Respondent's Exhibit 1) distributed to counsel by the Clerk of the Superior Court on October 31, 1973, and not by an appendices to the parties' briefs.

14. The rules of the Connecticut Supreme Court do not require professional printing such as Attorney Williams desires. Briefs and appendices may be produced by standard typographic printing, duplicating or copying process capable of producing a clear black image on white paper, except that the court may permit the use in argument of documents in typewritten form, subject to being produced in proper form later, if the court directs. (Section 723 of the Connecticut Practice Books).

15. On December 10, 1973, Attorney Williams moved for an extension of time within which to file his brief until May 1, 1974, alleging that he had not yet received his appendix from the printer (Respondent's Exhibit 3). The State opposed this Motion (Respondent's Exhibit 14) because of the claims which the Petitioner has made to this court concerning the delay in the state appellate process.

16. The rules of the Connecticut Supreme Court provide that extensions of time for the filing of the parties' briefs are to be made to the judge who tried the case or the court in which it was tried. As stated in Mr. Williams' affidavit on file with this Court Judge George who presided at Petitioner's trial is presently very ill, but Mr. Williams' motion at his request could be heard by the now presiding judge of the criminal session of the Superior Court for New Haven County. (Section 665 of the Connecticut Practice Book).

As stated in the affidavit, which is on file with this Court, of William J. Mack, Jr., President of the Company to whom Mr.

71

Williams has given his appendix to be printed, the very large order for Jerrold Barnett, an Assistant State's Attorney for New Haven County, was completed in September 1973. As shown by the affidavit of Mr. Barnett (Respondent's Exhibit 5) this order concerned the printing of briefs and appendices in three companion cases: State v. Clemente; State v. Della Camara, and State v. Esposito, which briefs and appendices were filed with the Supreme Court of Connecticut on September 12, 1973, and which cases although ready for the November Term of that court were heard at the December Term at the request of the defendant's counsel.

The Petitioner's claims of denial of due process because of post trial delay apparently fall into two categories:

a. Such delay is an inherent result of the rules of procedure established by the Connecticut Supreme Court. By virtue of this claim the Petitioner seeks to have this Court substitute itself for the Connecticut Supreme Court and determine de novo the claims he has made concerning deprivation of due process at his criminal trial. Without mention of the word injunction this claim is an attempt to prevent the Connecticut Supreme Court from deciding the merits of a criminal case properly before it. A claim of this nature would contravene the principle of Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, or would be one for proper consideration by a three judge court in a plenary proceeding pursuant to 28 U.S.C. 2281.

b. The other basis for the claim is that appellate counsel, whose competence has not been questioned on the appeal, has been ineffective in earlier stages of the appellate process. The ~~appropriate remedy for such ineffectiveness~~ would be that counsel undertake the speediest practicable resolution of the appeal.

STATE OF CONNECTICUT

By Michael Dearington
MICHAEL DEARINGTON
Assistant State's Attorney

100

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,
PETITIONER

v.

CIVIL NO. H-205

JOHN MANSON, Commissioner
of Corrections of the State
of Connecticut,
RESPONDENT

RESPONDENT'S MOTION TO DISMISS
OR FOR SUMMARY JUDGMENT

The Respondent moves pursuant to Rule 12(b), Federal Rules of Civil Procedure to dismiss the petition for writ of habeas corpus because it fails to state a claim upon which relief can be granted, in that it shows that the Petitioner has failed to exhaust his state remedies and that the relief which the Petitioner requests from this court, can not be granted on a habeas corpus petition.

Since exhibits in the form of affidavits, letters and portions of the state proceedings have been submitted to this court, by both parties, the Respondent also requests that the court treat the instant motion as one for summary judgment pursuant to Federal Rules of Civil Procedure 56.

The Respondent,
John Manson, Commissioner of
Corrections of the State of
Connecticut

BY

Michael Dearington
MICHAEL DEARINGTON
ASST. STATE'S ATTORNEY
NEW HAVEN COUNTY
121 ELM STREET
NEW HAVEN, CONNECTICUT 06510

NOTICE OF MOTION

TO: Morton P. Cohen, Esquire
Attorney for the Petitioner

Please take notice, that the undersigned will bring the above motion on for hearing before this court at the United States Federal Building, 430 Main Street, Hartford, Connecticut, on the 8th day of April, 1974 at 10:00 A.M. or soon thereafter, as counsel can be heard.

Michael Dearington

MICHAEL DEARINGTON
ASST. STATE'S ATTORNEY
COUNTY OF NEW HAVEN
121 ELM STREET
NEW HAVEN, CONNECTICUT 06510

C E R T I F I C A T I O N

This is to certify that a copy of the within and foregoing Respondent's Motion to Dismiss or for Summary Judgment and Notice of Motion has been mailed to Morton P. Cohen, Esquire, Attorney for the Petitioner, The University of Connecticut School of Law Legal Clinic, Greater Hartford Campus, West Hartford, Connecticut 06117 this 15th day of March, 1974.

Michael Dearington

MICHAEL DEARINGTON, ESQUIRE

State
vs.
John Ralls, aka
John Ralls

Anthony E. Mac
John E. Williams
10/24/70

Docket No. 163374
MAR 10, 1970

Judge For
Withdrawn
Discontinued

NO.	DATE	DOCKET ENTRIES
-----	------	----------------

Murder, first degree

6-15-70 Murder 1st degree Indictment of the Rd

6-30-70 Mist Guilty

11-11-70 Findings of Guilty by Jury of Murder and Degree of 9115 1971

12-11-70 JUDGE PRISON FOR THE TERM OF LIFE IMPRISONMENT.

George, J.

NO. DATE

DOCKET ENTRIES

APPEARANCES OF	PUBLIC
ANTHONY J. BROWN	DEFENDERS
FRANCIS	FOR
FILED	DEFENDANTS

1 6-11-70

2 6-15-70 True B. II. at State Prison.

3 7-17-70 L. A. G. to State filed

4 7-17-70 State Prison to George filed

7-17-70 E. Paul Nathan to State made and denied by George. T

7-17-70 Presentence investigation and report ordered on defendant _____

Ordered by the Court that pre sentence probation report not to be released to the public without the order of the Court or a Judge thereof.

5 12-9-70 Presentence report of C. J. 12-9-70 filed, as and counsel notified _____

Written notice of right to notify for review of sentence and appearance for review of sentence given _____ to defendant.

12-11-70 State Prison, State Prison, Department of Corrections, at health notified of _____

Sentence _____ 19 Defendant _____ 12-11-70 in writing of right of _____ to notify for review of sentence and for a hearing and for a hearing to prosecute appeal without expense.

State
of
Texas

Docket No.

1st Term.

16534

Judge For

Withdrawn

Discontinued

NO. DATE

DOCKET ENTRIES

6 Application of Waverly Rees & costs of appeal Filed

12-11-24 Granted by George J.

7

12-20-24 Application for extension of time to file

Public Defender

8

12-20-24 Motion for extension of time to file

and time extended to 30 days after transcript filed, counsel notified

9

7-8-71

Motion for extension of time to file Draft Findings and counsel notified.

Granted 7-23-71 by George J. and time extended to 8-23-71; counsel notified.

10

7-28-71

Transcript Filed

11

8-14-71

Received for Findings & Draft Findings filed

Transcript 9-15-71 by George J.

12

8-20-71

Motion for extension of time to file

and time extended to 10-15-71; counsel notified.

13

8-27-71

Motion for extension of time to file

Granted 11-2-71 by George J. and time extended to 12-1-71; counsel notified.

AB

NO. DATE

DOCKET ENTRIES

10-29-71 Local Motion of Alvin Altharp to W. Wilson Rogers

10-28-71

Presented by W. Wilson Rogers

10-25-71

Appearance of John R. Sullivan by W. Wilson Rogers

15. 10-25-71

For John R. Sullivan

16. 11-15-71

Filed & Counsel notified
Motion for permission to file Amended Draft Finding filed
Presented by George N

12. 12-14-71

34. 12-14-71

George N
Counsel - Finding
12-14-71

Filed

18. 12-14-71

Motion for extension of time to file
Amended Draft Finding filed
Presented by George N

19. 1-3-72

Amended
Request for Findings etc filed

20. 1-6-72

Motion for extension of time to file
Amended Draft Finding filed
Presented by George N

21. 2-10-72

Motion for extension of time to file
Counter Finding filed
Presented by George N

22. 3-29-72

Motion for extension of time to file
Counter Finding filed
Presented by George N

23. 5-2-72

Motion for extension of time to file
Counter Finding filed
Presented by George N

George N
Counsel - Finding
12-14-71

Filed

Motion for extension of time to file
Amended Draft Finding filed
Presented by George N

1-3-72

Amended
Request for Findings etc filed

2-10-72

Motion for extension of time to file
Counter Finding filed
Presented by George N

3-29-72

Motion for extension of time to file
Counter Finding filed
Presented by George N

Docket No. 16334
1st Term.
Jdg. For
Withdrawn
Discont'd.

NO. DATE

DOCKET ENTRIES

24 5-31-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Granted 6-8-72 by Judge
and time was extended to
July 31 1972, counsel notified.

25 7-31-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Granted 8-14-72 by Judge
and time was extended to
9-11-72, counsel notified.

26 9-12-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Granted by Judge
and time was extended to
counsel notified.

27 9-12-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Granted 10-2-72 by Judge
and time for filing same extended to
11-12-72, counsel notified.
Copy of bill for costs herewith Bonwill 11/2/72

28 11-14-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Appearance of Granted
for and time extended to
Filed & Counsel notified.

29 12-1-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

30 12-1-72 Motion for extension of time to file
Counters Filing filed
and counsel notified.

Granted 12-29-72 by Judge
and time was extended to
March 19, 1973, counsel notified.

30 1-5-73 Counter Ind. file
31 3-12-73 Ind. Ind. file
32 3-12-73 motion to correct findings

33 3-14-73 Assignment of Breeds Filed by State

34 5/2/73 Final Refiled

5-10-73 Motion for extension of time to file
Assigned of 5-10-73 filed
and counsel notified.
Granted 5-21-73 by Judge [unclear]
and time set; [unclear] extended to
September 1-73; counsel notified.

36 5/24/73 Assignment of Errors Filed

6-8-73 Correction of Paragraph 12 & Causal Nephew

37 7-10-73 Motion to Revoke Appeal Bond

38 7-24/73 Motion to Set Appeal Bond Filed

9-6-73 Appeal Bond set at \$15,000 by Shas J.

11-2-73 Motion for Revision to File Typewritten Brief Filed

12-4-73 Directed by Supreme Court Howell CJ & Cassel Nephew 12-7-73

11-3-73 [unclear] re 35 Filed

11 12/11/73 Motion for extension of time to file
Director's brief filed
Granted [unclear] by J. [unclear]
and time for filing cause extended to
[unclear]; counsel notified.

42 See File. Enter by [unclear] 12/11/73

43 Request for [unclear] Entered by [unclear] 12/11/73

STATE OF CONNECTICUT
NEW HAVEN COUNTY
SUPERIOR COURT

HAROLD J. IVEY
~~EDWARD MORRIS~~ Clerk of the Superior Court within and for New Haven County, in the State of

Connecticut, and keeper of the records and seal thereof, hereby certify that the above and foregoing is a true copy of the complete docket entries, all as on file in the records of this Court in the case of 16334 State of Connecticut vs. John Ralls, also known as John Ralls.

In testimony whereof I hereunto set my hand and affix the
seal of said court, at New Haven, in said county, this
23rd day of January, 1974.

Harold J. Ivey Clerk.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN R. MANSON, et. al., :
Respondents. : A F F I D A V I T

STATE OF CONNECTICUT: ss.
COUNTY OF NEW HAVEN:

JOHN WILLIAMS, being duly sworn, deposes and says:

1. That he is an attorney licensed to practice in the State of Connecticut.
2. That in October of 1971 he was appointed by Judge George of the Superior Court of New Haven as a special Public Defender for JOHN WESLEY RALLS, petitioner herein, and that he presently represents Mr. Ralls in his appeal to the Connecticut Supreme Court.
3. That prior to this appointment Mr. Ralls had been represented by ANTHONY DeMAYO, of the New Haven Public Defender's office, and that Mr. DeMayo had filed a proposed finding of fact and request for finding of fact in the Ralls matter.
4. That, upon the appointment, your deponent read the trial transcript and determined that an amended proposed finding and request were necessary in order that all potential reversible error and matters of fact were put before the Connecticut Supreme Court on the appeal.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

5. That your deponent ~~moved on~~ November 15, 1971, for permission to file such documents before Judge George and for an extension of time to file them until December 31, 1971, which motion was granted on December 6, 1971.

6. That, on December 15, 1971, your deponent moved for a second extension of time until February 1, 1972, to file, which motion was granted on January 11, 1972.

7. That on January 3, 1972, the amended draft finding and request for finding were filed with the State Court, and a copy is submitted herewith as Williams Exhibit No. 1.

8. That between January 4, 1972, and January 5, 1973, the State of Connecticut, representing appellees in the matter before the Connecticut Supreme Court, asked for and received ten extensions of time within which to file their counter-findings.

9. That your deponent did not object to any of the ten motions and orders for extensions of time, and did in fact stipulate to the last extension of time dated December 6, 1972.

10. That your deponent did not object to these extensions because he had been told by Jerold Barnett, State's counsel on the case that he was overworked, that he was receiving insufficient help, that he was then working nights and taking work home on weekends and that the work was ruining his family life. Indeed, your deponent would often pass Mr. Barnett's office late at night and notice that he was there working.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

184

11. That another reason for not objecting was that your deponent had several times objected to extensions of time in appeals to the Connecticut Supreme Court and that these motions for time extensions had nevertheless been summarily granted. Thus your deponent felt that such opposition would be futile, and would serve no purpose other than to irritate Mr. Barnett who could not, without additional assistance, move the case along more quickly. Nevertheless, your deponent did request that Mr. Barnett give preferential treatment to Mr. Ralls' case so as to expedite it, and in agreeing to the tenth extension of time, your deponent was informed by Mr. Barnett that the counter-findings had been finished and were in the process of being typed.

12. That after the filing of the counter-finding, the court, by Judge George filed its finding in March of 1973, but that this finding was a partial one in that the court had omitted necessary portions of the finding and the court then retracted the finding and refiled in May of 1973.

13. That, on information and belief, the Record went to the printer in June of 1973, after submission of the assignment of error, and were returned to counsel, in printed form, on October 31, 1973, some four or more months later.

14. That during July of 1973 your deponent submitted the appendix to his printer, WILLIAM MACK, so that the appendix could be printed and paginated and used in the brief. No further consideration was given to

-4-

the appendix since your deponent had been told by the printer that the appendix would not be ready until late Fall, 1973, since the printer was engaged in a lengthy printing for the State of Connecticut on an appeal. In December of 1973, several weeks after receipt of the Record, your deponent contacted the printer and was told the appendix would take another six to eight weeks of completion.

15. When your deponent was informed that the appendix would take up to two months for printing, and knowing the brief would take several weeks for preparation and then at least one month to print, your deponent then moved for an opportunity to file a typewritten brief in order to attempt to comply with the 45 day rule of the State Supreme Court in regard to submission of briefs. The Court had ruled favorably in a recent decision regarding typewritten briefs but, without an opinion your deponent's application was denied. *The State had opposed the application.* Thereafter your deponent filed a motion for an extension of five months which motion was filed on December 10, 1973, and has been opposed by the State on the basis, inter alia, of Mr. Ralls' application to the United States District Court. On information and belief, no decision has been reached by the State Court.

16. Your deponent has ~~never~~ *only once* met with Mr. Ralls personally. All other communications with Mr. Ralls which are pertinent to the reasons for delay have been by letter both from and to him, and all are

contained within this affidavit as Williams Exhibits through *Dr. Henry Tamarin of my office met with Mr Ralls at the prison in 1972. The anticipated delays in the appeal were discussed then, and they were discussed at my earlier meeting with Mr. Ralls. The letters, however, fairly represent the substance of those discussions.*

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

17. On information and belief, the Connecticut Supreme Court does not sit during July, August and September to hear argument or to decide appeals. Additionally, I have been given the same information by Jerold Barnett, of the State.

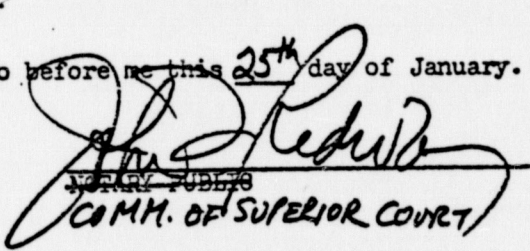
18. As to the motion for an extension of time, Mr. Diette, of the State's Attorney's office indicates Judge George is too sick to speak with counsel.

19. Regarding the appellant's brief, your deponent has not yet commenced writing it, and will not until the appendix is filed, but the research is done. It is expected the brief will be a long one.

20. As to communicating with Mr. Ralls, your deponent did not, *other than as mentioned above, 3/16* communicate regarding the year's extension including the one consent to an extension, but your deponent has attempted to keep Mr. Ralls otherwise informed regarding the processes of the case on appeal.


JOHN WILLIAMS

Subscribed and sworn to before me this 25th day of January.


NOTARY PUBLIC

COMM. OF SUPERIOR COURT

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

December 18, 1971

Mr. John Ralls
Box 100
Somers, Connecticut 06071

Dear Mr. Ralls:

I have been spending most of my time since our last meeting working on the amended draft finding in your case. It is now completed and is being typed. It should be ready for filing within the next couple of weeks, and will be sent to you at that time. Typing will take quite some time, because it is over seven hundred paragraphs -- as opposed to the one filed by Mr. DeMayo, which was less than fifty.

As you know, your post-conviction proceedings will be in two stages. We are in the first, which is the direct appeal, and which will consume a couple of years in all probability. If we lose this, the second stage will be habeas corpus -- both State and Federal. In the direct appeal stage, we cannot introduce any evidence of any kind; evidence can be introduced in the habeas corpus stage, however. For these reasons, the issues you mention in your letter -- pretrial publicity, the fact that you had no prior felony record, and the absence of black jurors -- must be raised during habeas corpus because there is no evidence of that on the face of the record which will be before the Supreme Court. There are many significant issues for direct appeal, however, which will be itemized in the amended draft finding.

On the direct appeal I will be raising, among other things, the issue of ineffective assistance of counsel. Usually that is raised only on habeas corpus because it is so difficult to show just from the face of the record. In your case, however, the record itself discloses so much along those lines that I believe it is worth the highly radical legal step of raising the issue initially in this way.

108

* 10

Incidentally, would you please ~~advise~~ by return mail what the reasons were for making the decision that you would not testify? In addition, do you know why no witnesses were called in your behalf? And, finally, were there any witnesses who could have been helpful?

As to the fingerprint card, was it in fact yours? What, exactly, is your prior record?

That is all for now. You will be hearing from me again soon.

Sincerely,

JOHN R. WILLIAMS

June 29, 1973

Mr. John Ralls
Box 100
Somers, Connecticut 06071

Dear John:

I am terribly sorry not to have seen you on your day in New Haven. Your letter arrived at what I thought was a time too late to respond, and I had long-standing plans to be out of the city the day you were here.

As to the question of bond, please let me know as candidly as possible exactly what sort of a bond you can really post. Then I will file an appropriate motion.

I expect the Record in your appeal to be printed by the end of the summer. Work is progressing very well on the brief, and that will be filed during 1973. I met again today with a law student I have working full time this entire summer on your appeal, and I am now certain that we have winning issues. In addition to that student, I have a second student in New York working part-time on it.

Sincerely,

JOHN R. WILLIAMS

110

3/6

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS, : CIVIL NO. H-205
Petitioner, :
vs. :
JOHN MANSON, et. al., :
Respondents. :

A F F I D A V I T

STATE OF CONNECTICUT:
COUNTY OF NEW HAVEN : ss.

WILLIAM J. MACK, JR., duly sworn, deposes and says:

1. I am the President of the William J. Mack Company located at 445 Washington Avenue, North Haven, Connecticut, and have been President since before July 1973.

2. The William J. Mack Company, hereafter known as the Company, is a printing firm which, as one of its services, prints legal documents for lawyers including Connecticut Supreme Court briefs and ^{appendices.} ~~dependencies.~~

3. In July of 1973 an attorney by the name of JOHN WILLIAMS from New Haven, Connecticut, came to the Company with a request that we print an Appendix to a brief in appeal to the Connecticut Supreme Court and he submitted the Appendix to us. The name of the person appealing was JOHN WESLEY RALLS.

4. At the time Mr. Williams came to us with the Appendix, we were doing a very large order for JEROLD BARNETT of the State's Attorney's office. This job was not finished until September 1973.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

///

5. Because of the large job for Mr. Barnett and because of summer vacations, the Ralls' material, submitted by Mr. Williams, was set aside in my office.

6. There was no communication between the Company and Mr. Williams from July, 1973, until December, 1973. In December, 1973, Mr. Williams called us to inquire about the Appendix. He was told at that time about our concern regarding payment of the bill, and Mr. Williams said he would submit a letter to us from ANTHONY DeMAYO of the Public Defender's office indicating that Mr. Williams had been appointed a Special Public Defender for Mr. Ralls, and that the State would pay the bill for the Appendix.

7. The reason the Appendix remained in my office from July, 1973, until December, 1973, is because I had gone to Brazil in August and expected to be gone a few days, but instead took several weeks, and when I returned I forgot about the Appendix being in my office. Nevertheless, had Mr. Williams called me to inquire about the Appendix before December, 1973, we probably could have saved about a month in having the Appendix printed.

8. Based on the information contained in Paragraph 6 herein, the printing of the Appendix has been commenced, At the date of this affidavit about one-third of the pages have been set and two-thirds remain, as well as the spacing, When the setting and spacing are completed, we will have to show the pages to Mr. Williams, then make the corrections and then paginate. We estimate six to eight weeks for completion of the Appendix.

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

1102

9. ¹⁵ As the brief for the appellant was received for printing after completion of the Appendix, and it contained about 70 pages, our experience indicates that it would take about four weeks for completion.

William J. Mack, Jr.
WILLIAM J. MACK, JR. (Affiant)

Subscribed and sworn to before me this 25th day of January, 1974.

Kathleen E. Rose
COMMISSIONER OF THE SUPERIOR COURT

LEGAL CLINIC
THE UNIVERSITY
OF CONNECTICUT
SCHOOL OF LAW

Greater Hartford
Campus
West Hartford,
Connecticut 06117

113

...four-day presentation, all in
closed session. The first meet-
ing would be on Thursday and
the next three on Tuesday

3-Alarm Fire Injures 2

By DAVID PERKINS
Journal-Courier Staff Reporter

danger list. Neither here identi-
fication nor the extent of her

Flames were leaping from
the roof and third floor of the

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,
Petitioner

:

v.

CIVIL NO. H-205

:

:

JOHN MANSON, Commissioner
of Correction of the State
of Connecticut,
Respondent

:

:

AFFIDAVIT OF JERROLD H. BARNETT

Jerrold H. Barnett being duly sworn does depose and say:

1. I am an Assistant State's Attorney for the State of Connecticut and for a period from July 1, 1970, when I was appointed to this position, to September 15, 1973, I was assigned to the Office of the State's Attorney at New Haven.

2. During this period I prepared and argued, on behalf of the State of Connecticut, practically all of the appeals from criminal convictions in the Superior Court for New Haven County. During this period, the number of appeals, in different stages of progress, varied between fifty and sixty-eight.

3. With regard to the Petitioner's appeal from his conviction of the crime of murder in the Superior Court for New Haven County, I acting in my capacity as Assistant State's Attorney either expressly consented to or raised no objection to any extensions of time requested by Anthony V. DeMayo, the Petitioner's former attorney, or John R. Williams, the Petitioner's present attorney. In addition, while in the process of preparing my counterfinding in response to Attorney DeMayo's draft finding, I consented to Mr. Williams' motion for permission to file an amended request for finding and draft finding after he had replaced Mr. DeMayo as Petitioner's counsel. Mr. Williams also either consented or raised no objection to the extensions of time requested by me.

114

17

4. In late June or early July of 1973, I sent a large order to William J. Mack Company in North Haven, which order was for the printing of briefs and appendices in the cases of State v. Clemente; State v. Della Camera and State v. Esposito. These were three companion cases of an involved nature. However, the briefs and appendices in all three matters were completed in the early part of September 1973, and were filed by me with the Clerk of the Supreme Court of Connecticut at New Haven on September 12 and September 13, 1973. Because of the time permitted for the filing of reply briefs by the appellants in these cases, they could not be heard by the Supreme Court at its October 1973 session. However, they were assigned for the November session but were heard instead at the December session at the request of counsel for the appellants.

5. In addition to the three cases of State v. Clemente, State v. Della Camera and State v. Esposito, the following criminal appeals from New Haven County were argued before the Supreme Court of Connecticut in the period from October 1973 - December 1973, State v. Hall, State v. Barbato and State v. Mullings. The State's briefs and appendices in all these matters were filed between September and November of 1973 and said briefs and appendices were all printed by the William J. Mack Company.

6. I have always preferred to use the William J. Mack Company for printing because of the expertise of its personnel and further because of my personal acquaintanceship with Mr. Mack and his subordinate, Mr. Louis Abrams, who is in charge of the legal printing. However, both the State's Attorneys and private counsel in areas other than New Haven, use printing firms in their respective locales. For example, legal printing such as is done by the William J. Mack Company is also done by the Marsh Press, Inc. in

Bridgeport and Brass City Printery in Waterbury.

7. The Supreme Court of Connecticut does not require the briefs or appendices before it to be printed by standard typographical means as is done by the William Mack Company. The appropriate rule contained in Section 723, as amended in 1969, of the Connecticut Practice Book permits either standard typographical printing or any other printing, duplicating or copying process capable of producing a clear black image on white paper. An example of this is shown by the printed record in this case (Exhibit 1) which is produced by a process which I believe is referred to as photo-offset. This process can be done by any number of firms in New Haven or environs. This process was used in the appellant's brief in the case of State v. Bethea, which was filed only recently by the firm of Jacobs, Jacobs & Grudberg, and in the brief and appendix filed on March 11, 1974, in the case of State v. Vernon Jones by Catherine G. Roraback, a partner or associate of the Petitioner's appellate counsel, Mr. Williams. No special permission is necessary for the use of the photo-offset process. I have considered the use of this process for the State's briefs but decided against it because it demands a higher degree of accuracy and thus less speed from the office typist and because I have not had any difficulty in having my work produced within reasonable time limits by the William J. Mack Company.

8. In addition to the cases above mentioned, the case of State v. L'Heureux, a criminal appeal from the Superior Court in New Haven County was argued before the Supreme Court of Connecticut at its January 1974 Session. The State's brief and appendix in this case was filed on December 6, 1973, which means that it was printed at the William J. Mack Company during the preceding month.

9. Although I have not seen the lengthy appendix which Mr.

Williams claims he has had difficulty in having printed, I question its necessity in view of the printed record in this case (Exhibit 1) which shows an absence of any motion to set aside the verdict. It would seem that in the absence of such a motion, the errors claimed on the appeal would be tested mainly by the contents of the trial court's finding which is contained in the printed record (Exhibit 1).

Jerrold H. Barnett
JERROLD H. BARNETT

Subscribed and sworn to before me this 12th day of March, 1974.

Robert E. Beach, Jr.
COMMISSIONER OF THE SUPERIOR COURT

UNITED STATES DISTRICT COURT
for the
DISTRICT OF CONNECTICUT

JOHN WESLEY RALLS,
Petitioner

vs.

JOHN MANSON,
Respondent

:

: CIVIL NO. H-205

:

MARCH 1974

A F F I D A V I T

STATE OF CONNECTICUT)
COUNTY OF NEW HAVEN) SS.

March / 21 / 1974.

WILLIAM J. MACK, JR., being duly sworn, deposes and says:

1. I am the President of the William J. Mack Company located at #445 Washington Avenue, North Haven, Connecticut, such company is a printing firm, which, among other things, prints legal documents for lawyers including briefs and appendices for the Connecticut Supreme Court.

2. In July of 1973, Attorney John Williams of New Haven, submitted to the William J. Mack Company for printing, an appendix in the appeal of John Wesley Ralls.

3. On February 20, 1974, the galleys of such appendix being ~~pages in length~~ ^{delivered} were sent by the William J. Mack Company to Mr. Williams ^{for} his examination and as of this date ^{all} such galleys have not been returned to us by Mr. Williams. ^{all}

4. We are unable to print the appendix until such
galleys have been returned.

William J. Mack
WILLIAM J. MACK, Affiant

Subscribed and sworn to before me this 12th day of
March 1974.

Michael Deering
Commissioner of the Superior Court

RECEIVED

NOV 1 - 1973

STATE'S ATTORNEY
NEW HAVEN COUNTY

NO. 16334

STATE OF CONNECTICUT)

SUPERIOR COURT

VS.)

AT NEW HAVEN

JOHN RALLS)

OCTOBER 31, 1973

MOTION FOR PERMISSION TO FILE TYPEWRITTEN BRIEF

The defendant moves that he be granted permission to file a typewritten brief in his appeal in the captioned matter for the following reasons:

1. The Record herein was filed today.
2. He must file his brief within 45 days.
3. He cannot submit his brief to the printer until the printer returns the galleys of the Appendix, because the Appendix pages must be cited at relevant portions of the brief.
4. His Appendix was submitted to the printer in July of 1973 and galleys have not yet been supplied.
5. Unless he is permitted to file a typewritten brief, it will not be possible to file a brief within the time provided by the Practice Book, for the reasons aforesaid.

For the above reasons, defendant further moves that he be permitted, in his said typewritten brief, to refer to pages of the transcript rather than to pages of the Appendix.

THE DEFENDANT

BY: _____

John R. Williams
Special Public Defender
His Attorney

117

ORDER

The foregoing motion having been heard, it is hereby

ORDERED: That the defendant is permitted to file a typewritten
brief on his appeal herein; and it is

FURTHER ORDERED: That the defendant shall file _____
copies of his said typewritten brief with the Clerk of the Supreme Court
and _____ copies thereof with the Reporter of Judicial Decisions;
and it is

FURTHER ORDERED: That the transcript on file in this Court
be treated as the Appendix to the defendant's brief subject to the filing of
a printed Appendix as soon as the same is provided to defense counsel by the
printer; and it is

FURTHER ORDERED: That, in his appeal brief, the defendant may
cite to pages of the transcript rather than to pages of the Appendix.

November _____, 1973

BY THE COURT _____, J.

ASSISTANT CLERK

Service certified per P.B.

RESPONDENT'S EXHIBIT 3

NO. 16334

STATE OF CONNECTICUT

VS.

JOHN RALLS

) SUPERIOR COURT

) AT NEW HAVEN

) DECEMBER 10, 1973

MOTION FOR EXTENSION OF TIME

The defendant moves that he be granted an extension of time until May 1, 1974, within which to file his appeal brief in this case. In support of this motion, he represents as follows:

1. Counsel submitted the appendix to the brief to legal printers in North Haven in July of 1973 and was advised that a backlog of legal printing would result in some delay.

2. The galleys of said appendix have not yet been received from said printers.

3. Said galleys are an essential prerequisite to submitting the brief to the printer, because the brief must contain citations to appropriate pages of the appendix.

4. It is reasonable to assume that the same delays encountered in printing of the appendix will obtain with respect to printing the brief itself.

5. Because of the foregoing massive delays, and because the defendant is incarcerated, counsel undersigned filed with the Supreme Court a motion for permission to file a typewritten brief in this case. The Supreme Court denied said motion on December 4, 1973, by order entered at New Haven on December 7, 1973. Consequently, there is no alternative to the relief herein requested.

RECEIVED

DEC 11 1973

STATE OF
NEW HAVEN, CT.

THE DEFENDANT

BY: _____

John R. Williams
Special Public Defender
265 Church Street
New Haven, Connecticut 06510
His Attorney

ORDER

The foregoing motion having been heard, it is hereby ORDERED:
That the defendant is granted an extension of time until May 1, 1974, within
which to file his appeal brief in this case.

THE COURT

BY _____, J.

Service certified per P.B.

RESPONDENT'S EXHIBIT 4

NO. 16334

STATE OF CONNECTICUT

VS

JOHN RALLS

SUPERIOR COURT

NEW HAVEN COUNTY

DECEMBER 13, 1973

STATE'S OBJECTION TO DEFENDANT'S
MOTION FOR EXTENSION OF TIME

The State must oppose the defendant's motion for extension of time to file his brief by May 1, 1974, for the following reasons:

1. Defendant's counsel is fully aware that the defendant has filed a federal habeas corpus writ alleging that the appellate procedures of the State of Connecticut violate due process.

2. The delay claimed by defendant in the return of the galleys of the appendix to his brief is incomprehensible, and

3. The request for such a lengthy delay seems to be geared only to providing the defendant with arguments in support of the habeas corpus motion.

THEREFORE, the State objects to the requested extension of time until May 1, 1974, and requests that a more reasonable time for filing said brief be established. The State respectfully requests a chance to be heard on this matter.

THE STATE OF CONNECTICUT

BY

Ernest J. Diette, Jr.
ERNEST J. DIETTE, JR.
Assistant State's Attorney

111

CERTIFICATION

Service certified in accordance with the Practice Book,
Section 80, this 13th day of December, 1973, to:

John R. Williams, Esq.
265 Church Street
New Haven, Connecticut

Ernest J. Diette, Jr.
ERNEST J. DIETTE, JR.
Assistant State's Attorney

112

The New Haven Register

Established 1812

EVENING AND SUNDAY

NEW HAVEN, CONN. 06503

New Haven Journal-Courier

Established 1755

MORNING

NEW HAVEN, CONN. 06503

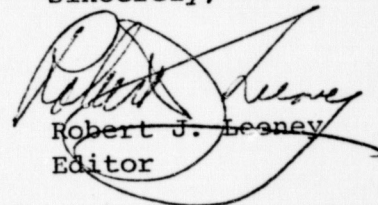
May 14, 1974

Mr. Jerrold H. Barnett
Asst. State's Attorney
8 Lunar Drive
Woodbridge, Connecticut 06525

Dear Mr. Barnett:

I enclose a tearsheet of the Journal-Courier's front page story of Wednesday, May 8, 1974, along with the continuation of the article on Page 11 of that date, as per your request. Authentication of the report is contained in the newspaper's masthead and dateline on both pages.

Sincerely,


Robert J. Leoney
Editor

RJL/c
Enc.

...four-day presentation, all in closed session. The first meeting would be on Thursday and the next three on Tuesday through Thursday of next week. About six to eight hours of those first four sessions will be spent listening to tapes of presidential conversations. Chairman Peter W. Rodino Jr., D-N.J., hopes to move the sessions along rapidly by resistering questioning to points needing clarification. St. Clair made it clear that the President had not ruled out

Alarm Fire Injures 2

By DAVID PERKINS
Journal-Courier Staff Reporter
Two women were injured late Tuesday night when a three-alarm fire struck a four-story brick dwelling at 26 Castle St., leaving five families homeless. The two injured women were taken to Yale-New Haven Hospital, one by Flanagan Ambulance and the other by New Haven Ambulance. One of the victims was admitted at 11:50 and placed on the

danger list. Neither here identification nor the extent of her injuries were known early this morning. The second woman, Carmen Zayas, was being treated at the emergency room, however hospital officials had not yet determined whether she would be admitted. The first alarm came at 11:25, with the second sounded at 11:29 followed by the third alarm at 11:42.

Flames were leaping from the roof and third floor of the structure when the first units arrived at the scene. Heavy smoke poured from the second floor windows as firemen worked to bring the blaze under control early this morning. Firemen fighting the blaze utilized the rooftops of adjacent buildings in playing lines of water on the flames. There were no reports of injuries suffered by firemen.

Israel Refines Demands

JERUSALEM (UPI) — Israel presented Secretary of State Henry A. Kissinger "new considerations" Tuesday night to take to Syria in an attempt to bring about a military disengagement on the Golan Heights. Both sides stopped short of calling it a proposal and it appeared still undecided whether Kissinger will actually take a map with a cease-fire line on it when he flies to Damascus early today.

A U.S. spokesman said Kissinger would return to Jerusalem with the Syrian reaction to an outline of the Israeli position tonight.

Kissinger got what was described as a complete Israeli point of view in an hour's meeting with Prime Minister Golda Meir, followed by a working dinner with Foreign Minister Abba Eban and other Israeli ministers.

From the statements afterward, it appeared that he would

be able to tell the Syrians how far the Israelis were willing to withdraw as well as their ideas on a buffer zone between the opposing forces, the thinning-out of the forces, and a role for the United Nations in enforcing any disengagement.

Kissinger will meet with Mrs. Meir again two hours before leaving on Wednesday. Kissinger flew back to Jerusalem late Tuesday from a meeting on

Cyprus with Soviet Foreign Minister Andrei Gromyko.

"What happened is that Israel presented her shaped opinion for the secretary to take to Damascus," Information Minister Shimon Peres told reporters after the dinner.

Peres said that Kissinger would be able to present "geographic considerations," an apparent reference to how

far and where Israeli forces would withdraw.

U.S. spokesman Robert J. McCloskey said that what Kissinger will take to Damascus is not necessarily the final, fixed Israeli position.

"Israel presented the United States with some new considerations which will be used as a basis for discussions with the Syrians when we go there tomorrow," McCloskey said.

"We still think there is a possibility for agreement but there is no way to know for certain before presenting them."

McCloskey said Kissinger would be able to discuss all elements of a possible agreement.

"It was the beginning of a crucial 48 hours for Kissinger's mission to the Middle East."

A high official said aboard his plane that by the end of it, Kissinger should know better whether he can complete the

See MIDEAST Page 11

Index

52 PAGES

Alsop, Joseph	10	Gardner, Hy	18
Amusements	36-37	Helen Help Us	20
Bishop, Jim	10	Horse Racing	34
Bridge	51	Lamb, Lawrence M.D.	51
Buckley, Wm. F. Jr.	10	Obituaries	11
City News	4-5, 33, 52	Sports	27-35
Classified Ads	40-50	Suburban News	8-9, 14-15, 36
Comics	51	Television	50
Crossword	51	Travel	16-17
Dixon, Jeanne	22	Weather	2
Editorial Page	10	Women's Pages	19-22
Financial	23-26		

Delays May Free Slayer

By WILLIAM A. LANOUÉ
Journal-Courier Staff Reporter
Federal court judge Tuesday ordered a New Haven man, convicted of murder more than three years ago, to be given a new trial within 60 days or released from prison.

In a 55-page decision, U.S. District Court Judge M. Joseph Blumenfeld may have opened the door for other persons currently serving prison sentences to move directly into the federal

process by by-passing the lengthy appellate procedure.

The ruling stemmed from a habeas corpus petition filed by John Ralls of New Haven who is currently serving a life sentence on a second degree murder conviction. Ralls was found guilty in November 1970 of the shooting death of his mother-in-law, Barbara Howells, of New Haven.

The basic issue in the case was whether a federal court had the right to consider Ralls' peti-

tion before the State Supreme Court had ruled on his appeal.

He ruled that because the Connecticut appellate procedures were so lengthy it constituted an exhaustion of state remedy clearing the way for a federal ruling on the habeas corpus issue.

New Haven attorney John R. Williams, who is handling Ralls' appeal to the State Supreme Court, called the decision "The most important ruling on the

Connecticut appellate system ever handed down."

Williams said that Ralls had filed his petition of habeas corpus independently and that after the filing the case was picked up by University of Connecticut Law School professors Morton Cohen and David Golub. Opposing the issue was Asst. State's Atty. Michael Dearington.

Williams also explained that he had worked on the federal portion of the case with the two

See DELAYS Page 11

since April 23 when Consolidated Edison of New York skipped a quarterly dividend, causing ripples across the utility stock market.

Gordon's letter to the PUC termed the company's financial situation, particularly current pressure on its ability gain new financing, "critical."

DUTY AT KESSLER
Airman Steven J. Hafey Jr., son of Mrs. Genivine Hafeychuck of 49 Dyer St., has been assigned to Kessler Air Force Base in Mississippi after completing Air Force basic training.

behind the President.

On Watergate, did you say? —no, the occasion was the signing of the energy bill in the President's Oval Office. Ribicoff has been a key sponsor and supporter of the measure.

In return, Richard Nixon gave Ribicoff one of the pens he used in the signing and Ribicoff told the President he was pleased with the legislation, describing it as "one of the keystones" to realizing energy independence for the nation.

COMPLETES BASIC
Pvt. Willie R. Gilchrist, son of Mrs. Gwen Gilchrist of 504 Wintergreen Ave., has completed eight weeks of basic training at the U.S. Army Training Center, Infantry, at Ft. Polk, La.

REMEMBRANCE

For Those
Interested
In Placing
Mothers Day
MEMORIALS

Call 772-3700 Before
3 P.M. Wednesday, MAY 8

HOMEMAKERS'
Home and Health Care Services

**PEOPLE
TO HELP YOU**

- Nurses • Nurse Aides
- Live-in Companions • Home Health Aides • Child Care/ Home Managers

All employees
screened, bonded
and insured.

CALL
Hamden
281-0655

Home-Care-Services

ARE YOUR LOVED ONES IN NEED OF PROFESSIONAL WARM AND TENDER CARE? MAY WE RELIEVE YOU OF WORRIES AND THE PAYROLL RED-TAPES?

We have qualified nurses, aides and homemakers available to give you peace of mind, ready to answer your call 24 hours a day. WON'T YOU CALL US? Tel: 777-5473

**RAIANO MEADOWBROOK
FUNERAL HOME**

*We are privileged
to serve all faiths*

Call 248-3039

2543 DIXWELL AVE. HAMDEN

Lawrence J. DeNardis, R-Hamden, said, "but nobody gets everything they want in any bill... I urge the governor to sign this...this bill on the whole is good...this bill along with the \$117 million bond bill and the transfer of the highway fund into a transportation fund are the three major transportation bills of this session."

State Sen. Nicholas A. Lenge, R-West Hartford, backed up DeNardis by saying that two-thirds financing was "some respectable step forward in mass transit." He said this is "obviously not a panacea, but a step in the right direction."

State Sen. William E. Strada, D-Stamford, who voted against the local one-third share for transit districts, said the cities are already struggling under the local property tax burden. "Funding is the heart of this bill and we are for 100 per cent state funding," he said.

Sen. Romeo G. Petroni said he opposed the compromise bill because he felt what was needed was a CTA that could mandate transit districts for the whole state, not just those districts that have a state subsidy.

Colin Pease, deputy commissioner of the Department of Transportation, said the new Connecticut Transportation Authority would appear to have equal and conflicting powers with the Department of Transportation, (DOT). However, he noted that at least for the first four years of the CTA's operation, the governor will appoint seven out of the 13 members and thus the CTA will follow administration policy.

◆ Lobbyist

(Continued from Page 1)

tive session. The Assembly will adjourn tonight.

Sen. Nicholas Lenge, a West Hartford Republican, who co-chairs the Appropriations Committee, was able to convince the Senate half of the committee to report the measure out to the floor of the Senate.

The House half of the committee, however, voted to refer the bill for further study, which effectively would have killed it.

However, the bill itself was a House bill. When it was brought up in the Senate, Senators objected that the Senate could not legally consider a House bill which had not been approved first in the House.

As it began to appear that the bill would meet little success in either Senate or House, Lenge moved to recommit, or kill, the measure. It was recommitted with no opposition.

Salaries of judges now range from \$26,000 yearly to \$40,000, depending on the court. When the court reorganization bill takes effect Dec. 31, salaries will range from \$23,500 to \$40,000.

Also Tuesday, the Senate passed and sent to the governor the celebrated "honeydippers" bill. The measure provides for licensing of sewage disposal system installers and cleaners.

The Senate also gave final Assembly approval to a bill governing noise pollution

◆ Delays

(Continued from Page 1)

UConn professors and added that Judge Blumenfeld also ruled that there were two instances in the original trial where Ralls' constitutional rights were violated.

Blumenfeld ruled that the admission of a state police fingerprint card on Ralls in the case intimated that Ralls had a prior record which is prejudicial and also that trial judge Louis George gave an improper version of the so-called "Chip Smith charge" to the jury.

The Chip Smith charge is supplemental to the judge's original charge to jurors and is aimed at breaking deadlocks among the panelists. In effect, the charge urges those members of the jury who are in the minority to reconsider their views in light of the majority opinion.

Both defense attorneys and prosecutors in the past have been critical of the state's appellate procedures, calling the process overly long, cumbersome and complicated. It is not uncommon for some persons convicted of crimes to serve out their minimum sentence before the appeal from the conviction is ever heard by the state Supreme Court.

Ralls was arrested March 4, 1970, three days after Mrs. Howells was found dead lying across the front seat of her car in a Hamden parking lot.

James P. Counihan Jr. den: and six grandch

A private funeral from the Hamden Funeral Home, 130 Ave., with a Mass of tian Burial in Our L Carmel Church, Bur in St. Mary's Ceme

FRANCISCO BEN

WEST HAVEN
Benedetti, 64, husband of Letta Davanzo Benedetti Hoffman St., died May 7, 1974, at the St. Raphael after a b

Born in Pirano, Italy, 1909, son of the late Maria Benedetti, he came to America as a young man and has lived in West Haven for many years. Prior to his retirement he was a painter in the main department for the W Co.

Besides his wife, son John Benedetti Haven. He was preceded by a sister, Mrs. Marie Fonda.

The funeral will be at the funeral home of Porto & Son, Building West Haven, Thursday, May 9, 10 a.m. Burial at 10 a.m. Burial in Lawrence Cemetery

◆ Mideast

(Continued from Page 1)

disengagement agreement this trip.

The official said "likely" that Kissinger will make some progress have to return to accord later.

A high American Kissinger's plane way back from Cyprus that the United States the Soviet Union military disengagement Golan Heights.

Fighting between Syria in the Golan Heights the 57th straight day but the Israeli army there was a marked increase in the intensity of Syria gave no indication of a letup.

The Israeli government opposition at the compromise. The still meeting in Cyprus and it is an hour meeting with cement.

NO. 16334

STATE OF CONNECTICUT

VS.

JOHN RALLS

)
)
)
)
)

SUPERIOR COURT

AT NEW HAVEN

MAY 10, 1974

MOTION FOR REDUCTION OF BOND

Pursuant to the Eighth and Fourteenth Amendments to the United States Constitution, the defendant moves that his bond in this case be reduced to \$1,000. In support of this motion, he respectfully represents as follows:

1. His present bond is an appeal bond which was set following his conviction of murder in the second degree. He has been unable to post this bond, and has been continuously incarcerated in lieu of bond since 1970.
2. On May 7, 1974, in Civil Action H-205, Ralls v. Manson, in the United States District Court, Judge Blumenfeld ruled that constitutional error was committed at the defendant's trial and ordered him to be re-tried within 60 days.
3. The defendant has, accordingly, reverted to pre-trial status and is entitled to the presumption of innocence.
4. During the period of his post-trial incarceration at the State Prison, the defendant has on more than one occasion been released on weekend furloughs without supervision. The defendant has been a model prisoner and poses no risk of flight or danger to the community.

RECEIVED
MAY 13 1974
STATE'S ATTORNEY
NEW HAVEN COUNTY

-2-

THE DEFENDANT

BY: 

John R. Williams
265 Church Street
New Haven, Connecticut 06510
Special Public Defender
His Attorney

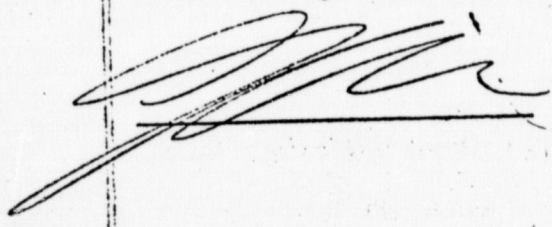
ORDER

The foregoing motion having been heard, bond is ORDERED
fixed in the amount of \$

THE COURT

_____, J.

Service certified per P. B.



RECEIVED

MAY 14 1974

STATE'S ATTORNEY
NEW HAVEN COUNTY

NO. 16334

STATE OF CONNECTICUT

VS.

JOHN RALLS

) SUPERIOR COURT

) AT NEW HAVEN

) MAY 13, 1974

MOTION FOR PERMISSION TO
RETAIN PRIVATE INVESTIGATOR

The defendant moves that he be granted permission to retain, at public expense, a private investigator to locate and interview critical defense witnesses in the captioned action. In support of this Motion, he represents that, by order of the United States District Court, he has been ordered retried on a charge of murder in the second degree, his said trial to begin not later than July 5, 1974.

The offense with which he is charged is alleged to have been committed in 1970 and his first trial was conducted in 1970. The difficulties of locating the essential defense witnesses in a matter so old require professional investigative assistance. The defendant is indigent and is represented in this matter by the undersigned special public defender.

THE DEFENDANT

BY: _____

John R. Williams
265 Church Street
New Haven, Connecticut 06510
Special Public Defender,
His Attorney

118

O R D E R

The foregoing Motion having been heard, it is
hereby ORDERED: ~~_____~~

THE COURT

BY _____, J.

Service certified per P. B.

132

NEW HAVEN COUNTY
SUPERIOR COURT
FILED

MAY 17 1974

LEONARD J. GILHULY,
ASST. CLERK

NO. 16334

STATE OF CONNECTICUT)	SUPERIOR COURT
)	
VS.)	AT NEW HAVEN
)	
JOHN RALLS)	MAY 13, 1974

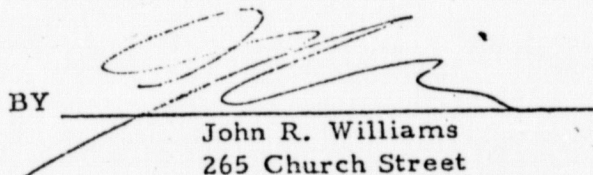
MOTION TO STRIKE LANGUAGE
FROM INFORMATION

The defendant moves that all language contained in the Information suggesting or declaring that he is or has ever been known by the name "John Rawls" be stricken from the said Information for the following reasons:

- (1) He is not now and never has been known by the name "John Rawls."
- (2) The use in the Information of language suggesting that he has used the name "John Rawls" is highly prejudicial to him in that it suggests to the jury that he is a sinister person who has used or now uses an alias.
- (3) Because he will be tried in this Court no later than July 5, 1974, immediate relief of the type herein requested is essential to assure him a fair trial and due process of law.

THE DEFENDANT

BY


John R. Williams
265 Church Street
New Haven, Connecticut 06510
Special Public Defender
His Attorney

ORDER

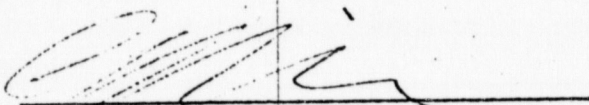
The foregoing motion having been heard, it is hereby

ORDERED:

THE COURT

BY _____, J.

Service certified per P.B.

A handwritten signature in dark ink, appearing to be "C. M. J.", is written over a horizontal line.